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ABSTRACT

The report of the Senate Committee on Labor and Public Welfare deals with S.6, a bill to provide financial assistance to the States for improved educational services for handicapped children under the Education of the Handicapped Act. Included are sections to extend entitlement through 1979, to establish eligibility and application provisions, to strengthen the administrative and evaluative responsibilities of the Commissioner of Education, to remove architectural barriers, and to require affirmative action in the employment of qualified handicapped individuals. Also presented are the additional views of five senators who disagree with the full committee's action insofar as it fails to require all states to provide special educational services (including early identification and evaluations) to preschool handicapped children. (LH)

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94TH CONG. 1st Sess.

Calendar No. 162

REPORT No. 94-168

EDUCATION FOR ALL HANDICAPPED CHILDREN ACT

JUNE 2, 1975.—Ordered to be printed

Mr. RANDOLPH, from the Committee on Labor and Public Welfare, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 6]

The Committee on Labor and Public Welfare, to which was referred the bill (S. 6) to provide financial assistance to the States for improved educational services for handicapped children having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

BRIEF SUMMARY OF COMMITTEE BILL

S. 6, as reported from Committee, extends the entitlement formula for payments to States for Fiscal Year 1975 under the Education of the Handicapped Act for one additional fiscal year; adds Congressional findings and a statement of purpose section; adds definitions of certain new terms under the Education of the Handicapped Act necessary to implement the provisions of the Committee bill; establishes a new entitlement formula for payments to States for fiscal years 1977 through 1979; establishes eligibility and application provisions related thereto; establishes provisions relating to administration and evaluation responsibilities of the Commissioner of Education; and adds two new sections to the Education of the Handicapped Act relating to the employment and advancement in employment of qualified handicapped individuals and to grants for the removal of architectural barriers.

EC073748

SECTION 2—EXTENSION OF ENTITLEMENT FORMULA

The Committee bill extends through fiscal year 1976 the entitlement formula (based on the total State population aged three to twenty-one) in present law and operating for fiscal year 1975 only, and provides that in fiscal year 1976 the States will be assured the amount they actually received in the previous fiscal year under that formula.

SECTION 3—CONGRESSIONAL FINDINGS; PURPOSE; DEFINITIONS

This section of the Committee bill sets forth the Congressional findings, the statement of purpose, and definitions of certain new terms included under the Act. Those terms which are added to existing law or are changed from existing law are the following: "handicapped children" (amended to replace the term "crippled" with the term "orthopedically impaired" and to include "children with specific learning disabilities"); "children with specific learning disabilities;" "equipment" (amended to include telecommunications, sensory, and other technological aids and devices); "free appropriate public education"; "individualized planning conference"; "related services", and "special education".

SECTION 4—ENTITLEMENT FORMULA FOR PAYMENTS TO STATES; ELIGIBILITY AND APPLICATION; ADMINISTRATION AND EVALUATION

This section, effective July 1, 1976, replaces Part B of the Education of the Handicapped Act with a new Part B to establish an entitlement formula for payments to States for fiscal years 1977 through 1979. Further, it establishes provisions relating to eligibility and application (which incorporate certain existing provisions of the Education of the Handicapped Act) and relating to administration and evaluation by the Commissioner of Education. These may be summarized as follows:

(*A*) *Entitlement Formula*

Effective July 1, 1976, the Committee bill establishes an entitlement formula for payments to the States through fiscal year 1979 providing that the maximum amount to which a State is entitled is equal to $300 multiplied by the number of handicapped children, aged three to twenty-one, who are receiving special education and related services in the State. The Committee bill provides that each State, in each succeeding fiscal year, will be assured a minimum base payment equal to the amount it received in the prior fiscal year. This same concept applies to each succeeding fiscal year, thus assuring each State the amount it received in the prior year plus an additional amount based on the number of handicapped children actually served. If sufficient funds are not appropriated to satisfy the full entitlement for each State, the bill provides that those funds appropriated will be allocated to the States on a ratably reduced basis. The Committee bill also provides that no State may count, for the purposes of payment, more handicapped children than a number equal to 10 percent of the total population of all children in the State aged three to twenty-one,

and that the Commissioner of Education shall seek from each State, within one year from the date of enactment, certification of the actual number of handicapped children receiving an education within the State.

(B) Eligibility

In order to assure that full educational opportunities are available to all handicapped children, the Committee bill establishes eligibility provisions for assistance under the Act which clarify, amend and replace provisions of existing law. In so doing, the bill replaces present State plan provisions with requirements for eligibility and an annual application. Amendments enacted in Public Law 93-380 established basic due process procedures and protections, a priority for service to handicapped children who are not receiving an education, a prohibition on discrimination in testing, and provision of educational services in the least restrictive environment appropriate to the needs of the handicapped child. Those amendments further required the States to submit to the Commissioner of Education within one year from date of enactment (i.e., August 21, 1975) policies and procedures to ensure that all handicapped children within the State would be identified, located and evaluated; that a goal of providing full educational opportunities would be established, including a timetable for delivery of full services to all handicapped children; and that a description of the facilities, personnel and services necessary to meet such a goal be included.

In order to carry these planning provisions into actual delivery of services, the Committee bill adopts provisions to assure the right to education for handicapped children, to set a date by which handicapped children and their parents will be assured that they in fact have a right to education, and to establish a process by which State and local educational agencies may be held accountable for providing educational services for all handicapped children. Thus, the Committee bill provides that a State, in order to be eligible for funding, must have a "right to education" policy for all handicapped children, that all handicapped children aged three to eighteen will have available to them by September 1, 1978 a free appropriate public education, and that all handicapped children aged three to twenty-one will have available to them by September 1, 1980, a free appropriate public education. With respect to handicapped children, aged three to five and aged eighteen to twenty-one, inclusive, the Committee bill provides that such requirement shall not be applied in any State if the application of such requirement would be inconsistent with State law or practice, or the order of any court, respecting public education within such age groups in the State. To assure that funds under the Act are appropriately targeted to accomplish this goal, the bill provides that the State must establish priorities for services, first to handicapped children not receiving an education, and second, to handicapped children with the most severe handicaps receiving an inadequate education.

The Committee bill further extends the protections afforded under amendments adopted last year assuring that handicapped children and their parents would be guaranteed procedural safeguards in any

decisions affecting the education of such children. The bill provides for an individualized planning conference, to be held at least three times a year, involving the parents or guardian, an individual representing the local educational agency qualified to provide special education, the child's teacher and the child when appropriate who will meet jointly to develop and review a written statement describing the educational services to be provided and, when appropriate, to revise such statement with the agreement of the parents.

The Committee bill also establishes a process for accountability within the States for the expenditure of funds. In order to accomplish this goal, the Committee bill rests final responsibility upon the State Educational Agency for assuring that all handicapped children within the State receive a free appropriate public education. Further, the State educational agency is responsible for assuring that funds for the education of handicapped children under other Federal laws will be utilized in such a way which is consistent with the priorities under this Act, but which shall not limit the requirements of other Federal laws. The bill provides that the State must establish procedures for consultation with interested persons, including handicapped individuals and parents, for the purpose of assisting in the development of the State plan and programs for expenditure of funds under the Act. The bill also provides that the State establish an entity for assuring compliance with the Act, which shall conduct periodic evaluations and receive complaints with respect to violations and erroneous classification.

(C) Application

The bill provides that an annual application be submitted which describes the policies and procedures for expenditure of funds under the Act (including the expenditure of funds under other Federal programs which provide assistance for the education of handicapped children), and for inservice training of personnel. This provision requires that of the funds distributed under the new Part B, 40 percent shall be distributed to local educational agencies within the State in direct proportion to the number of handicapped children who are in need of a free appropriate public education, and 60 percent of such funds shall be distributed in a manner which is consistent with priorities for providing a free appropriate public education, first, with respect to handicapped children who are not receiving an education, and second, with resect to handicapped children with the most severe handicaps who are receiving an inadequate education.

(D) Administration and Evaluation

The Committee bill includes provisions designed to strengthen the administration and evaluation process provided by the Office of Education, requiring the Commissioner to assure certification by the State of the actual number of handicapped children receiving an education in each State previous to July 1, 1976 and in each fiscal year thereafter and to prescribe that a uniform financial report be used by the State in submitting an application which will assure accurate data on children served. The Commissioner is also required to carry out evaluations of

the effectiveness of programs funded under the Act and evaluations of State efforts to provide a free appropriate public education. He is required to submit annually a report to the Congress on such evaluations.

SECTION 5—EMPLOYMENT OF HANDICAPPED INDIVIDUALS; GRANTS FOR THE REMOVAL OF ARCHITECTURAL BARRIERS

The Committee bill provides that all recipients of funds under the Education of the Handicapped Act shall take affirmative action to employ and advance in employment qualified handicapped individuals. Finally, it provides new authority to the Commissioner of Education to make grants to State and local educational agencies for the removal of architectural barriers.

BACKGROUND

In 1966, the Congress added a new title VI to the Elementary and Secondary Education Act, Public Law 89-750. Prior to that time, the Federal Government had done little to assist in the education of handicapped children, and the effectiveness of existing programs was dissipated by the lack of a single strong administrative body. The Bureau of Education for the Handicapped was established by this law in order to provide the leadership necessary in this field.

On April 13, 1970, the amendments to the Elementary and Secondary Education Act, Public Law 91-230, were signed into law. Public Law 91-230 repealed title VI, E.S.E.A. as of July 1, 1971, and created a separate act, the Education of the Handicapped Act. Part B of that Act authorized grants to the States and outlying areas to assist them in initiating, expanding and improving programs for the education of handicapped children.

During the first session of the 93d Congress, the Senate passed S. 896, the Education of the Handicapped Amendments of 1973. The purpose of S. 896 was to extend all the provisions of the Education of the Handicapped Act (Public Law 91-230) for 3 years beginning July 1, 1973, to insure the continued targeting of funds and resources to handicapped children. Funds under the state grant program were used to assist States through new matching formula grants to initiate, expand, and improve preschool, elementary, and secondary educational and related services to handicapped children. Rather than providing full support, the Federal Government continued its function as a catalyst to local and State program growth. Joint planning with the States increased the number of available programs for handicapped children by coordinating services offered by various Federal programs and local resources, for example, Elementary and Secondary Education, Titles I and III, and Vocational Education, et cetera.

Since the House companion bill to S. 896 was made part of the Elementary and Secondary Education Amendments of 1974 in the House Education and Labor Committee, the Subcommittee took the text of S. 896 and made it title VI of S. 1539, the Senate Elementary and Secondary Education Amendments of 1974. Increased awareness of the educational needs of handicapped children and landmark court decisions establishing the right to education for handicapped children pointed to the necessity of an expanded Federal fiscal role.

Therefore, a floor amendment was introduced that greatly increased the authorizations under part B (Aid to the States) for fiscal 1975 in order that the States would be able to meet the mandate set forth in this legislation to identify, locate and evaluate all handicapped children, to establish a policy of providing full educational opportunities for all handicapped children, and to establish a timetable for accomplishing this goal. At full funding, approximately $660,000,000 would be made available to the States to meet their mandates. The Elementary and Secondary Education Amendments of 1974 were signed into law as Public Law 93-380. The new provisions in Part B of Public Law 93-380 laid the basis for comprehensive planning, the delivery of additional financial assistance to the States, and the protection of handicapped children's rights by due process procedures and assurance of confidentiality.

This legislation was originally introduced as S. 3614 on May 16, 1972. It followed a series of landmark court cases establishing in law the right to education for all handicapped children. Since those initial decisions in 1971 and 1972 and with similar decisions in 27 States, it is clear today that this "right to education" is no longer in question.

In 1954, the Supreme Court of the United States established the principle that all children be guaranteed equal educational opportunity. The Court stated: "In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity . . . is a right which must be made available to all on equal terms." (*Brown* v. *Board of Education*)

More recently the Federal cases of *Pennsylvania Association for Retarded Children* v. *Pennsylvania* and *Mills* v. *Board of Education of District of Columbia* were decided. These court rulings guarantee the right to free publicly-supported education for handicapped children and have resulted in similar court actions in the State and Federal courts throughout our Nation.

The Court in *Mills* ordered that:

"No child eligible for a publicly-supported education in the District of Columbia public schools shall be excluded from a regular public school assignment by a rule, policy, or practice of the Board of Education of the District of Columbia or its agents unless such child is provided:

(a) adequate alternative educational services suited to the child's needs, which may include special education or tuition grants and,

(b) a Constitutionally adequate prior hearing and periodic review of the child's status, progress, and the adequacy of any educational alternative."

S. 3614 was reintroduced in the 93rd Congress on January 1, 1974, as S. 6, the "Education for All Handicapped Children Act" and was again reintroduced in the 94th Congress on January 15, 1975. The intent of S. 6 is to amend Title VI, Part B, and to establish in law a comprehensive mechanism which will insure that those provisions enacted during the 93d Congress are expanded and will result in maximum benefits to handicapped children and their families.

S. 6 was ordered reported from the Subcommittee on the Handicapped on May 12, 1975. On May 20, 1975, the full Committee on

Labor and Public Welfare unanimously ordered favorably reported S. 6 with amendments in the nature of a substitute and a title amendment.

HEARINGS

The Subcommittee on the Handicapped has heard extensive testimony on S. 6. Hearings were held on April 9, 1973, in Newark, N.J., with testimony being presented by representatives from the States of New Jersey, New York, Pennsylvania, Delaware, and Maryland; on May 7, 1973, in Boston, Mass., with testimony being presented by representatives from the States of Massachusetts, Vermont, New Hampshire, Connecticut, and Maine; on May 14, 1973, in Columbia, S.C., with testimony being presented by representatives from the States of South Carolina, North Carolina, Georgia, Florida, and Alabama; on October 19, 1973, in St. Paul, Minn., with testimony being presented by representatives from the States of Minnesota, Wisconsin, North Dakota, South Dakota, and Iowa; on March 18, 1974, in Harrisburg, Pa., with testimony being presented by representatives from the State of Pennsylvania in order to review the implementation of the Pennsylvania Association for Retarded Citizens (PARC) Consent Decree that resulted from *PARC v. the State of Pennsylvania;* on June 17 and 24, 1974, in Washington, D.C., with testimony being presented by representatives from the Administration, from the general education associations, and from the States of California and Oklahoma. Further hearings were held on S. 6, S. 1256 and S. 1264 (S. 1256 and S. 1264 are, respectively, one and two year extensions of the funding formula in effect for fiscal year 1975) on April 8, 9 and 15, 1975, in Washington, D.C., with testimony being presented by representatives from the States of Massachusetts and Maryland; representatives from major education associations, the Administration, handicapped individuals representing organizations of handicapped persons and handicapped individuals themselves. Overall, the Committee has heard in excess of one hundred individuals representing legislators, parents, parent organizations, consumers, education associations and educators from the local, State and National level.

The views presented in this testimony have been carefully reviewed and provide the basis for the changes made by the Committee in this legislation. These individuals and organizations were generally unanimous in their testimony on the following points: (1) support for the basic thrust of S. 6; (2) recognition of the need for a final date in legislation by which time all handicapped children are to be provided a free appropriate public education; (3) support for Federal assistance to assure that the rights of handicapped children are protected; and (4) awareness of the need for expansion of Federal assistance and responsibility in the area of education for handicapped children.

NEED FOR LEGISLATION

In recent years decisions in more than 36 court cases in the States have recognized the rights of handicapped children to an appropriate education. States have made an effort to comply; however, lack of financial resources have prevented the implementation of the various decisions which have been rendered.

The Education Amendments of 1974 incorporated the major principles of the right to education cases. That Act added important new provisions to the Education of the Handicapped Act which require the States to: establish a goal of providing full educational opportunities to all handicapped children; provide procedures for insuring that handicapped children and their parents or guardians are guaranteed procedural safeguards in decisions regarding identification, evaluation, and educational placement of handicapped children; establish procedures to insure that, to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped; and that special classes, separate schooling, or other removal of handicapped children from the regular education environment occurs only when the nature of severity of the handicapped is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily; and, establish procedures to insure that testing and evaluation materials and procedures utilized for the purposes of classification and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory.

Whereas the actions taken at the State and national levels over the past few years have brought substantial progress, the parents of a handicapped child or a handicapped child himself must still too often be told that adequate funds do not exist to assure that child the availability of a free appropriate public education. The courts have stated that the lack of funding may not be used as an excuse for failing to provide educational services. Yet, the most recent statistics provided by the Bureau of Education for the Handicapped estimate that of the more than 8 million children (between birth and twenty-one years of age) with handicapping conditions requiring special education and related services, only 3.9 million such children are receiving an appropriate education. 1.75 million handicapped children are receiving no educational services at all, and 2.5 million handicapped children are receiving an inappropriate education. (Table 1 contains the estimated number of handicapped children served and unserved, by type of handicap.)

TABLE 1.—ESTIMATED NUMBER OF HANDICAPPED CHILDREN SERVED AND UNSERVED BY TYPE OF HANDICAP, 1974–75

	1974–75 served (projected)	1974–75 unserved	Total handicapped children, served and unserved	Percent served	Percent unserved
Total age 0 to 19	3,947,000	3,938,000	7,885,000	50	50
Total age 6 to 19	3,687,000	3,062,000	6,699,000	55	45
Total age 0 to 5	260,000	327,000	1,187,000	22	78
Speech impaired	1,850,000	443,000	2,293,000	81	19
Mentally retarded	1,250,000	257,000	1,507,000	83	17
Learning disabilities	235,000	1,731,000	1,966,000	12	88
Emotionally disturbed	230,000	1,080,000	1,310,000	18	82
Orthopedically and other health impaired	235,000	93,000	328,000	72	28
Deaf	35,000	14,000	49,000	71	29
Hard of hearing	60,000	268,000	328,000	18	82
Visually handicapped	39,000	27,000	66,000	59	41
Deaf-blind and other multi-handicapped	13,000	27,000	40,000	33	67

Source: Bureau of Education for the Handicapped, U.S. Office of Education (Note that the term "orthopedically impaired" is used in place of "crippled" to conform with legislative change made by S. 6)

The long range implications of these statistics are that public agencies and taxpayers will spend billions of dollars over the lifetimes of these individuals to maintain such persons as dependents and in a minimally acceptable lifestyle. With proper education services, many would be able to become productive citizens, contributing to society instead of being forced to remain burdens. Others, through such services, would increase their independence, thus reducing their dependence on society.

There is no pride in being forced to receive economic assistance. Not only does this have negative effects upon the handicapped person, but it has far-reaching effects for such person's family.

Providing educational services will ensure against persons needlessly being forced into institutional settings. One need only look at public residential institutions to find thousands of persons whose families are no longer able to care for them and who themselves have received no educational services. Billions of dollars are expended each year to maintain persons in these subhuman conditions. This Nation has long embraced a philoshophy that the right to a free appropriate public education is basic to equal opportunity and is vital to secure the future and the prosperity of our people. It is contradictory to that philosophy when that right is not assured equally to all groups of people within the Nation. Certainly the failure to provide a right to education to handicapped children cannot be allowed to continue.

Parents of handicapped children all too frequently are not able to advocate the rights of their children because they have been erroneously led to believe that their children will not be able to lead meaningful lives. However, over the past few years, parents of handicapped children have begun to recognize that their children are being denied services which are guaranteed under the Constitution. It should not, however, be necessary for parents throughout the country to continue utilizing the courts to assure themselves a remedy. It is this Committee's belief that the Congress must take a more active role under its responsibility for equal protection of the laws to guarantee that handicapped children are provided equal educational opportunity. It can no longer be the policy of the Government to merely establish an unenforceable goal requiring all children to be in school. S. 6 takes positive necessary steps to ensure that the rights of children and their families are protected.

Discussion

DEFINITIONS

The Committee bill amends section 602 of the Education of the Handicapped Act to add new definitions or amend existing definitions of the following terms: "handicapped children", "children with specific learning disabilities", "individualized planning conference", "related services", and "special education". All other definitions contained in section 3(b) of the Committee bill are unchanged from existing law.

The Committee bill amends the definition of handicapped children to replace "crippled" with the term "orthopedically impaired", and to include "children with specific learning disabilities." No substantive change occurs by using the term orthopedically impaired. At present,

existing law does not prohibit children with specific learning disabilities from being served under Part B of the Education of the Handicapped Act. The Committee believes that children with specific learning disabilities who by reason of their disability require special education and related services (as defined in this bill) should be ensured a right to education and that parents of such children have the right to expect that individually designed instruction to meet their children's specific needs is available. Thus, the Committee has included these children within the definition of children eligible for services under the bill. The definition clearly refers only to children whose handicaps will require special education and related services, and not to children whose learning problems are caused by environmental, cultural or economic disadvantage. For example, such term does not include children who may be slow learners. The Committee urges the Commissioner of Education to examine closely this definition and the population group identified as having this disability to assure that no abuse takes place with regard to the provision of services under this Act.

The Committee bill amends the definition of "equipment" to include telecommunications, sensory, and other technological aids and devices in order to assure that new developments in technological applications may be provided for the education of handicapped children.

Telecommunications devices or device means those aids which can expand, or transform sensory signals so that they may be used to enhance the handicapped individual's participation in society. Such devices may include hearing, visual or tactile aids, teletypewriters or other numerical acoustical coupled devices which allow deaf people to use the common telephone, technical aids and devices which allow blind, auto or sensory calculators for use by the blind, and which allow physically handicapped people to use the typewriter devices.

The Commissioner is directed to solicit proposals for the development and demonstration of telecommunications or sensory aid devices which show promise for assisting the handicapped individual to participate in common communication media such as print, telephone, television, radio, and other common carriers.

The Committee bill defines the term "free appropriate public education" as special education and related services provided at public expense which shall include an appropriate preschool, elementary, or secondary school education in the applicable State and which is provided in conformance with an individualized planning conference.

The Committee emphasizes that, in requiring that a free appropriate public education be available for all handicapped children, a State remains responsible for providing an appropriate education designed to meet the specific needs of the handicapped child at no cost to that child's parent. State or local educational agencies are encouraged to utilize existing preschool services available in the community through other public or private nonprofit agencies as long as such services meet the unique needs of the child, at no cost to parents, and are provided in conformance with the requirements of the Act.

The Committee bill defines "individualized planning conference" as a meeting or meetings to be held at least three times a year for the pur-

pose of developing, reviewing, and when appropriate and with the agreement of the parents or guardian, revising a written statement of appropriate educational services to be provided for each handicapped child. The planning conference shall be conducted with the joint participation of the parents or guardian, the child (when appropriate), the child's teacher and a representative of the local educational agency who is qualified to provide or supervise the provision of special education.

In reviewing the testimony on this bill and after consultation with professionals in the field, the Committee recognizes that in order to derive any benefit to the child, parent, and teacher an individualized planning conference must be held a minimum of three times per year. The frequent monitoring of a handicapped child's progress throughout the year is the most useful tool in designing an educational program for not only the child but those who are responsible for his management in school and at home.

There is evidence that an individualized planning conference on an annual basis is insufficient. It is the Committee's intent in requiring that individualized planning conferences be provided for each handicapped child that these conferences be utilized as an extension of the procedural protections guaranteed under existing law to parents of handicapped children, and that they be the logical extension and the final step of the evaluation and placement process.

They are not intended to be the evaluation process itself. Thus, it is the intent of this provision that local educational agencies involve the parent at the beginning of and at other times during the year regarding the provision of specific services and short-term instructional objectives for the special education of the handicapped child, which services are specifically designed to meet the child's individual needs and problems. The Committee views this process as a method of involving the parent and the handicapped child in the provision of appropriate services, providing parent counseling as to ways to bolster the educational process at home, and providing parents with a written statement of what the school intends to do for the handicapped child.

It is not the Committee's intention that the written statement developed at the individual planning conferences be construed as creating a contractual relationship. Rather, the Committee intends to ensure adequate involvement of the parents or guardian of the handicapped child, and the child (when appropriate) in both the statement and its subsequent review and revision. The Committee has included a requirement that any revision of the statement be done only with the agreement of the parents or guardian in order to ensure that services to the child are not arbitrarily curtailed or modified.

During the hearings on this bill, the Committee received testimony that the individualized written educational plan (as contained in the bill introduced in January) would require school systems to develop an expertise and ability to provide services guaranteed to assure educational progress. The Committee recognizes that in many instances the process of providing special education and related services to handicapped children is not guaranteed to produce any particular outcome. By changing the language of this provision to emphasize the process of

parent and child involvement and to provide a written record of reasonable expectations, the Committee intends to clarify that such individualized planning conferences are a way to provide parent involvement and protection to assure that appropriate services are provided to a handicapped child. The Committee has deleted the language of the bill as introduced which required objective criteria and evaluation procedures by which to assure that the short term instructional goals were met. Instead it has required the Commissioner of Education to conduct a comprehensive study of objective criteria and evaluation procedures which may be utilized at a later date in conjunction with individualized data available through the individualized planning conference to determine the effectiveness of special education and related services being provided.

The Committee further points out that it intends that a copy of the statement thus developed be retained on file within the school district with copies provided to parents and others involved subject to strict procedures for protection of confidentiality. While it believes that such statements may be useful to a State educational agency for purposes of audit and evaluation, it does not intend that such records be forwarded to the State agency, but be available for inspection.

The Committee bill provides a definition of "related services," making clear that all such related services may not be required for each individual child and that such term includes early identification and assessment of handicapping conditions and the provision of services to minimize the effects of such conditions.

Finally, the Committee bill provides a definition of "special education" as specially designed instruction including physical education at no cost to parents or guardians to meet the unique needs of a handicapped child. The Committee points out in addition that a handicapped child has a right to receive all services normally provided a nonhandicapped child enrolled in a public elementary or secondary school. Thus, he or she has a right to physical education services, health screening, transportation services and all other services which are provided to all children within the school system, and a right to as many options in curricula as are available to all children.

The Committee is concerned that although physical education services are available to and, in most instances, are required of, all children within a school system, the provision of physical education services, which are highly important to the physical development and well-being of handicapped children, are often seen as services to be provided only as a luxury for handicapped children. While in some instances such services need to be specially designed for handicapped children, these services should be provided as a matter of course, and the Committee expects the Commissioner of Education to take such action as may be necessary consistent with his responsibilities under section 504 of the Rehabilitation Act of 1973 to assure that physical education and all other services normally provided to all children are made available for handicapped children. Therefore, the Committee included physical education specifically within this definition to make clear that it expects such services to be provided.

Handicapped individuals have a normal probability of being creative and talented. The Bureau of Education for the Handicapped,

through partial support of the Theatre of the Deaf, Gallaudet College Drama and Dance groups and the National Technical Institute for the Deaf creative groups have demonstrated that deaf individuals have the ability to compete in the world of performing arts. Examples of creative careers by blind performers such as Ray Charles, Little Stevie Wonder, Ann Adams, Eric Klaus, and others have demonstrated success in the musical world. Physically handicapped people have often developed unusual and creative talents in graphic arts.

The use of the arts as a teaching tool for the handicapped has long been recognized as a viable, effective way not only of teaching special skills, but also of reaching youngsters who had otherwise been unteachable. The Committee envisions that programs under this bill could well include an arts component and, indeed, urges that local educational agencies include the arts in programs for the handicapped funded under this Act. Such a program could cover both appreciation of the arts by the handicapped youngsters, and the utilization of the arts as a teaching tool *per se*.

Museum settings have often been another effective tool in the teaching of handicapped children. For example, the Brooklyn Museum has been a leader in developing exhibits utilizing the heightened tactile sensory skill of the blind. Therefore, in light of the national policy concerning the use of museums in Federally-supported education programs enunciated in the Education Amendments of 1974, the Committee also urges local educational agencies to include museums in programs for the handicapped funded under this Act.

ASSISTANCE TO STATES FOR THE EDUCATION FOR ALL HANDICAPPED CHILDREN

Effective July 1, 1976, section 4 of the Committee bill amends and replaces the language of existing Part B of the Education of the Handicaped Act in order to provide an entitlement formula for fiscal years 1977 through 1979 and to establish eligibility criteria and annual application requirements. This section is designed to establish basic minimum procedures governing the distribution of Federal funds for assistance to the States for the education of all handicapped children, to establish priorities for service, to establish a timetable for assuring a free appropriate public education as provided in this Act for all handicapped children throughout the United States, and to establish within the States a process for discovering and correcting violations of rights of handicapped children and abuses in the use of these Federal funds. It is the intent of the Committee to establish and protect the right to education for all handicapped children and to provide assistance to the States in carrying out their responsibilities under State law and the Constitution of the United States to provide equal protection of the laws. The bill does, however, provide a degree of flexibility to the States in carrying out these responsibilities.

The Committee bill has been designed to meet the following purposes: (1) to focus the distribution of funds to the States based on an incentive formula related to the actual delivery of services by a

time certain to all handicapped children; (2) to assure a priority in delivery of services to handicapped children most in need, i.e., those handicapped children who are not receiving educational services and those handicapped children with the most severe handicaps currently receiving an inadequate education; (3) to provide an orderly process in the extension of service delivery, placing emphasis on providing early identification and assessment; (4) to provide and reinforce procedural protections for parents and children in all matters relating to the educational process; (5) to focus directly on the problem of erroneous classification and labelling of children by setting a limitation on the population of children who may be counted as eligible for services, strengthening procedural guarantees, and providing a mechanism for compliance evaluation and investigation of complaints; and (6) to assure sole responsibility for the education of all handicapped children by the State educational agency.

Entitlement Payments to States

The Commiteee bill extends the present entitlement formula for payments to States under the Education of the Handicapped Act for one additional fiscal year through June 30, 1976, and further establishes, effective July 1, 1976, a new entitlement formula for payments to States based on the number of handicapped children aged three to twenty-one who are receiving special education and related services within a State multipled by $300. The operation of this formula is limited, however, by two additional conditions. First, no State may count, for purposes of the entitlement for the education of handicapped children, more than 10 percent of its total population aged 3 to 21. And second, a "base year" approach is adopted for the length of the bill providing that in each year a State is assured the amount it received in the prior fiscal year. Therefore, in any current fiscal year only funds appropriated above the amount appropriated in the prior fiscal year would be distributed to States on the basis of the new entitlement formula.

The Committee points out that it has authorized the Commissioner to make payments to the Secretary of Interior for the education of handicapped children on reservations serviced by elementary and secondary schools for Indian children by the Department of the Interior, providing that such payments may not exceed 1 percent of the aggregate amounts to which States are entitled in a fiscal year. In this regard, it is the intent of the Committee that all requirements applied to States and local educational agencies respecting eligibility and application shall apply to the Department of the Interior, and that all benefits and protections provided for handicapped children served by State and local educational agencies shall also be provided to handicapped children served by the Department of Interior.

The Committee has adopted this formula in order to provide an incentive to States to serve all handicapped children and to assure that the entitlement is based on the number of children actually receiving special education and related services within the State and for whom the State or the local educational agency is paying for

such education. It has, however, adopted a formula which assures stability in payment to States so that funds in each succeeding fiscal year will at least be equal to those received in the prior fiscal year.

S. 6 as introduced contained a funding formula based on the excess cost of providing an education for a handicapped child. This formula was rejected by the Committee as too complicated to administer or to assure equity based on presently available data. At the same time, however, the Committee wished to develop a formula which would target funding and eligibility for funding on the population of handicapped children for whom services would be provided. The formula in existing law, the Education of the Handicapped Act, distributes Federal funds to the States on the number of all children, aged three to twenty-one within such State. The Committee has developed a formula which generates funds on the basis of the handicapped children receiving an education within the State.

Other provisions of the Committee bill direct that these funds be spent on a priority basis, first with respect to children not receiving an education, and second with respect to children with the most severe handicaps receiving an inadequate education.

In addition, the Committee wished to provide, on a per-handicapped child basis, a reasonable dollar amount which relates to actual dollars spent on handicapped children, and which would assist the State in paying for part of the cost of educating each child. Studies done by the National Education Finance Project estimated that the actual cost of educating a handicapped child is on the average, double the cost of educating a non-handicapped child. While this estimate may vary by State, the dollar level of $300 in the Committee bill represents an amount approximately equal to 25 percent of such additional cost, and will provide an amount per handicapped child which will assist States and local educational agencies in providing appropriate education for handicapped children.

Within State Distribution Formula

The Committee bill provides an entitlement to States for the education of handicapped children, a concept contained presently in existing law. The Committee believes that the States must target funds on handicapped children most in need of services if the States are to indeed meet their goal of providing full educational opportunity for all handicapped children within the timetables prescribed in this Act.

The Committee was concerned, however, by testimony presented by the Council of Great City Schools, the National School Boards Association and other individuals and organizations representing local school districts which indicated that present distribution of funds under existing law may not reflect the substantial population in urban and other school districts in need of services. The Committee believes that the simple "pass-through" of all funds based solely on the population of the local educational agency fails to provide an adequate incentive for serving all children within the total time period specified in the bill. Further, such a "pass-through" reduces the ability of a State to target funds in such a way as will assure all handicapped children a free appropriate public education.

The Committee has therefore adopted a within State distribution mechanism which it believes combines both (1) needed flexibility for State educational agencies, and (2) assurance of a base level of assistance to local educational agencies to meet their own unserved and severely handicapped children. Under this provision, the bill provides that (1) 40 percent of the funds distributed under this part shall be distributed by the State Educational Agency to local educational agencies within the State in direct proportion to the number of handicapped children in need of a free appropriate public education within the area served by each local educational agency, and (2) 60 percent of such funds shall be distributed by the State educational agency in a manner consistent with priorities required to meet the specific timetables of the bill, first with respect to handicapped children not receiving an education, and second, with respect to handicapped children with the most severe handicaps receiving an inappropriate education. The Committee points out that with respect to payments to local educational agencies required to be made in direct proportion to the number of handicapped children in need of a free appropriate public education, "in need" shall include both handicapped children receiving such an education, and handicapped children who are not receiving, but require such an education.

It should be clear, however, that the goal of providing a free appropriate public education to all handicapped children, aged three to eighteen, by September 1, 1978, and aged three to twenty-one, by September 1, 1980, remains paramount to the Committee. Local educational agencies shall be required by the State to adopt such policies and procedures as are necessary to assure that funds received under this Act are expended in such a way that the priorities of the bill (with respect to handicapped children not receiving an education and handicapped children with the most severe handicaps receiving an inappropriate education) are met in accordance with the timetable established. The Committee also wishes to point out that it encourages arrangements such as the combination of local educational agencies, or the creation of special school districts in order to meet the special needs of handicapped children. Local educational agencies should not look to this assistance as general revenues or generalized assistance to mitigate their own responsibilities with regard to providing a free appropriate public education for all handicapped children. The primary purpose of funds under this Act is to assure all handicapped children an appropriate education. It is expected that necessary arrangements to achieve this goal will be made by local educational agencies.

ELIGIBILITY

The Committee bill provides that in order to qualify for assistance in any fiscal year commencing on or after July 1, 1976, a State shall demonstrate that certain conditions are met. These conditions are designed to ensure that a State shall undertake the necessary steps to carry out its responsibilities under the Act.

Thus, the Committee bill requires that the State have in effect a policy that assures all handicapped children the right to a free appro-

priate public education. Second, the bill requires that the State will undertake or has undertaken policies and procedures to assure that a free appropriate public education will be available (1) to all handicapped children aged three to eighteen by September 1, 1978, and (2) to all handicapped children aged three to twenty-one by September 1, 1980. With respect to handicapped children, aged three to five and aged eighteen to twenty-one, inclusive, such requirements shall not be applied in any State if the application of such requirements would be inconsistent with State law or practice, or the order of any court, respecting public education within such age groups in the State. It should be noted, however, that a State which is not providing an education to such handicapped children shall not count such children for purposes of entitlement. Third, the bill requires that the State establish priorities for providing a free appropriate public education which shall meet the timetables established (relating to the provision of services by September 1, 1978 and September 1, 1980) first, with respect to handicapped children not receiving an education, and second, with respect to handicapped children with the most severe handicaps receiving an inadequate education.

Fourth, it requires that the State assure that local educational agencies provide and maintain records of the individualized planning conference for each handicapped child including the written statement developed from the conferences, and that such conferences will be conducted at least three times a year to develop, review and, with the agreement of the parents or guardian, revise the statement. Fifth, the bill requires that the State educational agency be responsible for insuring the implementation of and compliance with provisions of the Act, and for the general supervision of educational programs for handicapped children within the State, including all such education programs administered by any other State or local agency. Finally, to assure orderly due process with regard to carrying out the provisions of the Act and to assure compliance with provisions of the Act, the Committee bill provides that the State shall establish policies and procedures to provide consultation with persons involved in or concerned with the education of handicapped children including handicapped individuals and parents of handicapped children. Further, in this regard, the State shall establish an entity to assure compliance with the provisions of the Act which shall conduct periodic evaluation and be empowered to receive, and take such necessary steps as are required, to resolve complaints of violations of the requirements of the Act.

Dates for Providing Services and Priorities

Court action and State laws throughout the Nation have made clear that the right to education of handicapped children is a present right, one which is to be implemented immediately. The Committee believes that these State laws and court orders must be implemented and that the Congress of the United States has a responsibility to assure equal protection of the laws and thus to take action to assure that handicapped children throughout the United States have available to them appropriate educational services. The Committee believes that the pro-

visions it has adopted in S. 6 reinforce this right to education, while still providing States and local educational agencies ample time to fullfill the full services goal. It points out that the Office of Education has adopted a goal of providing full educational opportunities for all handicapped children from birth to twenty-one by 1980.

In recent information submitted to the Bureau of Education of the Handicapped, forty-six states have indicated that they will provide full educational services to all handicapped children from birth to twenty-one by 1980. Further, 31 of these states have stated that they will have met this goal before 1980. The Committee bill provides an orderly and flexible timetable for the provision of these services and priorities for expenditure of Federal funds.

It provides that the State establish policies and procedures to assure that all handicapped children aged three to eighteen are provided services by September 1, 1978 and that all handicapped children aged three to twenty-one be provided services by September 1, 1980.

In order to assure that States take action to implement these dates, the Committee bill further adopts priorities for the expenditure of Federal funds geared to reaching the goal of providing services to all handicapped children. Thus, the bill requires that States establish priorities for providing a free appropriate public education to all handicapped children and that these priorities shall meet the timetables of the bill, first with respect to handicapped children who are not receiving an education and second with respect to handicapped children with the most severe handicaps who are receiving an inadequate education. The Committee stresses that the first priority must be given to meeting the timetable for handicapped children who are currently not receiving any educational services. This group of children is by far the most neglected in the educational process and must be the first priority for State and local educational agencies.

The Committee further believes that identifying and providing services to preschool children who are handicapped is critical to assuring that these children are assisted early in life so that their handicapping conditions do not delay their educational development. It is for this reason that the Committee specifically included the three to five year old age group within the timetable for providing services by September 1, 1978. While the Committee does not include children from birth up to three within the priority or within the timetable for services, it points out that funds under the Act, as in existing law, may be spent for providing services to these children. The Committee wishes to encourage the provision of such services to such children, and points out that early identification, screening and assessment, and parent counseling are specifically included within the definition of "related services" which should be appropriately provided to handicapped children for this purpose.

With regard to the timetable adopted in the Committee bill the Committee points out that it has provided (in new section 614 (2) (B)) that with respect to handicapped children aged three to five and eighteen to twenty-one, inclusive, the requirements shall not be

applied in any State if the application of such requirements would be inconsistent with State law or practice, or the order of any court, respecting public education within such age groups in the State.

This exception with respect to handicapped children aged three to five and aged eighteen to twenty-one, inclusive is intended to exempt states from the provisions of this Act establishing a timetable for providing a free appropriate public education in these age groups in the following circumstances:

(1) where State law does not authorize, or expressly prohibits, the expenditure of public funds to provide such an education to any children in these age groups;

(2) where a State does not *in fact* provide or assure the provision of free public education to handicapped children in these age groups; or

(3) where the education of handicapped children in a State is governed by a court order, the terms of which are inconsistent with the requirement contained in new section 614(2)(B). This exception shall not apply in the following circumstances:

(1) where a State does *in fact* provide or assure the provision of free public education to non-handicapped children in these age groups; or

(2) where a State does now *in fact* provide or assure the provision of free public education to handicapped children in these age groups (thus the exception being inapplicable in the case of a State which attempts to abandon the provision of such education services.

Further, this exception is in no way to be viewed as a statement of Federal policy which discourages or otherwise serves as an obstacle for the provision of services to those handicapped children in the age groups to which this exception is applicable. To the contrary, the Committee intends the timetables established in new section 614(2)(B) to be viewed as a whole, thereby specifically encouraging the States to intensify their efforts to serve all handicapped children within the time periods specified in that section. In this regard it should be noted that each State's entitlement to financial assistance under this Act is based on the actual number of handicapped children aged three to twenty-one, inclusive, who are receiving special education and related services in that State. Thus, this entitlement formula has the effect of providing a bonus to those States which assure that within the specified timetables special education and related services are available to handicapped children between the ages of three and five and between the ages of eighteen and twenty-one, inclusive.

Table 2 shows the type of State laws or other legal requirements relating to the education of handicapped children by State, and includes the scope of each law, the date the law is to be implemented and the date of enactment), and the ages of eligibility for handicapped children covered by such law.

TABLE 2.—STATE STATUTORY RESPONSIBILITIES FOR THE EDUCATION OF HANDICAPPED CHILDREN [1] [2]

State	Type of mandation	Date of passage	Compliance date	Ages of eligibility	Categories of children not included in mandate
Alabama	Full planning and programing	1971	1977	6 to 21	Profoundly retarded.
Alaska	Full program	1974		From age 3	
Arizona	Selective planning and programing	1973	9/1/76	5 to 21	Emotionally handicapped.
Arkansas	Full planning and programing [3] selective	1973	1979-80	6 to 21	
California				6 to18 [3]	"Educationally handicapped" (emotionally distrubed, learning disabled).
Colorado	Full planning and programing	1973	7/1/75	5 to 21	
Connecticut	do	1965		4 to 21 [3]	
Delaware	Full program "wherever possible"			4 to 21	Severely mentally or physically handicapped.
District of Columbia	No statute: Court order: Full program	1972	1974	From age 5	
Florida	Full program		[4] 1973	3 -no maximum (13 years guaranteed)	
Georgia	Full planning and programing	1968	1975-76	3 to 20	Profoundly retarded.
Hawaii	Full program	1949		5 to 20	
Idaho	do [5]	[6] 1972		Birth-21	
Illinois	do	1965	7/1/80	3 to 21 [3]	
Indiana	Full planning and programing	1969	1973	6 to 18 [3]	
Iowa	Full program "if reasonably possible"	1974		Birth-21	
Kansas	Full planning and programing	1971	[7] 1979	Birth-21	
Kentucky	Full planning and programing	1970	1974	(8)	
Louisiana	Court order-Orleans Parish only: Selective for mentally retarded. Otherwise, mandatory.	1972	1972	3 to 21 [9]	Other than trainable mentally retarded. Other than mentally retarded.
Maine	Full planning and programing	1973	[10] 1975	5 to 20	
Maryland	do	1973	[11] 1979	(12)	
Massachusetts	do	1972	9/1/74	3 to 21	
Michigan	do	1971	1973-74	Birth-25	
Minnesota	Full program		[13] 7/2/72	4-21, except mentally retarded: 5-21 and emotionally disturbed: 6-21.	
Mississippi	Permissive			Birth-21	
Missouri	Full planning and programing	1973		5 to 21	
Montana	Full program: [14]	1974	7/1/79	6 to 21	
Nebraska	Full planning and programing	1973	[15] 10/1/76	5 to 19	
Nevada	Full program	1973		5 to 18 [16]	
New Hampshire	do			Birth to 21	
New Jersey	do	[17] 1954		5 to 20	
New Mexico	Full planning and programing	1972	1976-77	6 to 21 [18]	
New York	Full program	1973	1973	5 to 21	
				5 to 21	Profoundly, retarded.
North Carolina	Full planning	1974	(19)	Birth-21	
North Dakota	Full planning and programing	1973	[20] 7/1/80	5 to 21 [21]	
Ohio	Permissive				Other than crippled or educable mentally retarded.
		1972	1973	Birth-21	Trainable or profoundly mentally retarded.
Oklahoma	Full program	1971	9/1/70	4 to 21 [22]	
Oregon	do	1973		EMR: 6 to 21. Others: Birth to 21	

Pennsylvania	Court order: Selective (mentally retarded only).	1971–72	9/72	6 to 21[24]	Other than mentally retarded.
	Full planning and programing	1956	1956	6 to 21	
Rhode Island	Full program		[25] 1964	3 to 21[26]	
South Carolina	Full planning and programing	1972	1977	6 to 21[25]	
South Dakota	Full program	1972		Birth to 21	
Tennessee	Full planning and programing	1972	1974–75	4 to 21	
Texas	Full program[27]	1969	[27] 1976–77	3 to 21	
Utah	do	1969		5–21	
Vermont	Full program[28]	1972		Birth to 21	
Virginia	Full planning:	1972	(29)	2 to 21	
Washington	do	1971		6 to 21[30]	
West Virginia	do	1974	1974	5 to 23[24]	
Wisconsin	Full planning and programing	1973	8/74	3 to 21	
Wyoming	Full program	1969		6 to 21	

[1] Current statute is conditional: 5 or more similarly handicapped children in district. However, a 1973 Attorney General's opinion stated that the law mandating full planning and programing was effective July, 1973. If the State activates a kindergarten program for 5-year-old children, ages of eligibility will be 5 to 21.

[2] Permissive for children 3–21, except mentally retarded: 5 yrs. 8 mos. –21.

[3] 3 to 21 for hearing impaired. Lower figure applies to age of child as of January 1 of the school year.

[4] 1973 law did not include profoundly retarded; however, a 1974 amendment brought these children under the provisions of the mandatory law. Compliance date for full services to these children is mandated for 1977–78.

[5] Earlier (1963) law was mandatory for all handicapped children except trainable mentally retarded.

[6] 5 to 21 for speech defective.

[7] "Developmentally Disabled" means retardation, cerebral palsy or epilepsy. For other disabilities, the State board is to determine ages of eligibility as part of the State plan. Compliance date is July 1, 1974 for DD programs.

[8] Permissive: 3–6.

[9] Residents over age 21 who were not provided educational services as children must also be given education and training opportunities.

[10] In cases of significant hardship the Commissioner of Education may waive enforcement until 1977.

[11] Court order sets deadline in September 1975.

[12] Services must begin as soon as the child can benefit from them, whether or not he is of school age but at least birth–21.

[13] Date on which trainable mentally retarded were included under the previously existing mandatory law.

[14] Statute now in effect is selective and conditional: at least 10 educable mentally retarded, 7 trainable mentally retarded, or 10 physically handicapped in school district. Full mandation becomes effective July 1, 1979.

[15] Acoustically handicapped: October 1, 1974.

[16] Aurally handicapped and visually handicapped: birth to 18.

[17] Date of original mandatory law, which has since been amended to include all children.

[18] Child must be 6 years old by January 1 of school year.

[19] Implementation date to be specified in preliminary state plan to be submitted to 1975 general assembly.

[20] All children must be served as soon as they are identified as handicapped.

[21] 2 to 21 for blind, partially blind, deaf, hard of hearing.

[24] When programs are provided for pre-school age children, they must also be provided for mentally handicapped children of the same age.

[25] For mentally retarded or multiply handicapped. Others, as defined in regulations. Compliance date established by regulations.

[26] 4 to 21 for hearing handicapped.

[27] The Texas Educational Agency is operating under the assumption that the law is mandatory, and has requested an opinion from the state Attorney General on this question. Compliance date is as established by State policy if the law does not specify a compliance date.

[28] Within the limits of available funds and personnel.

[29] September 1, 1976 established by regulations.

[30] Permissive: 3–5 and 19–21.

[31] Permissive: Below 5 years old.

[32] Deaf children to be served at age 4.

[33] Permissive: Below 6 years old.

[34] Permissive: 3–4.

*** Compiled by the Committee on Labor and Public Welfare from "Digest of State and Federal Laws: Education of Handicapped Children", 3rd edition, The Council for Exceptional Children.

Notes:

Definition of the kinds of mandatory legislation used by states:

Full Program Mandate: Such laws require that programs must be provided where children meet the criteria defining the exceptionality.

Planning and Programing Mandate: This form includes required planning prior to required programing.

Planning Mandate: This kind of law mandates only a requirement for planning.

Conditional Mandate: This kind of law requires that certain conditions must be met in or by the local education district before mandation takes effect (this usually means that a certain number of children with like handicaps must reside in a district before the district is obliged to provide for them).

Mandate by Petition: This kind of law places the burden of responsibility for program development on the community in terms of parents and interested agencies who may petition school districts to provide programs.

Selective Mandate: In this case, not all disabilities are treated equally. Education is provided (mandated) for some, but not all categories of disabilities.

Testimony before the Committee in April of this year raised several questions with regard to the language in existing law providing that the priority in expenditure of funds shall be given to handicapped children not receiving an education. It is for this reason that the Committee has provided that States shall provide second priority in meeting the timetable for service to handicapped children with the most severe handicaps who are receiving an inadequate education. It is the intent of the Committee that States follow this priority by providing services to handicapped children who, within each disability group, (including the multihandicapped as a disability group) have the most severe handicaps. Priority must be given to multihandicapped children who are the most severely disabled, children with the most severe orthopedic handicaps who require special education and related services, children with the most severe hearing impairments, and so on. While this provides some flexibility in the use of funds under the second priority for expenditure of funds by the States, it should be clear that the priority does not extend to children with minimal handicaps, and that other sources of State or local funds should be used to provide services to such children.

Furthermore, while the Committee has provided that the State educational agency is to be the final responsible authority for assuring that all handicapped children have available to them free appropriate public education, it does not intend that State and local educational agencies must be the sole providers of such services. Particularly with respect to preschool services, while the local educational agencies are responsible under the Act for making available educational services to handicapped children, the Committee believes that these funds should be deployed wisely, and public and private non-profit agencies currently providing preschool services should be utilized to meet the full services mandate. The Committee points out, however, that services provided in this fashion are required to meet all requirements of the Committee bill including provisions relating to the least restrictive environment. In this sense, the local educational agency becomes the lead agency for assuring that educational services are appropriate for the handicapped child and that all rights under this Act and other applicable law extend to such children. The Committee further understands that, especially in providing preschool services, parent involvement in the services provided and in assisting the development of a school program is very important. School programs should provide an ongoing process for consultation and parent involvement and parent education, similar to that provided under such programs as Head Start.

The Committee rejects the argument that the Federal Government should only mandate services to handicapped children if, in fact, funds are appropriated in sufficient amounts to cover the full cost of this education. The Committee recognizes the State's primary responsibility to uphold the Constitution of the United States and their own State Constitutions and State laws as well as the Congress' own responsibility under the 14th Amendment to assure equal protection of the law. As specifically stated by Judge Waddy in the Memorandum Opinion, Judgement and Decree (*Mills* v. *Board of Education of the District of Columbia, 1972*):

> The defendants are required by the Constitution of the United States, the District of Columbia Code and their own regulations to provide a publicly-supported education for these "exceptional" children. Their failure to fulfill this clear duty to include and retain these children in the public school system or otherwise provide them with publicly-supported education and their failure to afford them due process hearing and periodical review, cannot be excused by the claim that there are insufficient funds. . . . the District of Columbia's interest in educating the excluded children clearly must outweigh its interest in preserving its financial resources. *If sufficient funds are not available to finance all of the services and programs that are needed and desirable in the system, then the available funds must be expanded equitably in such a manner that no child is entirely excluded from a publicly-supported education consistent with his needs and ability to benefit therefrom. The inadequacies of the District of Columbia Public School System, whether occasioned by inefficient funding or administrative inefficiency, certainly cannot be permitted to bear more heavily on the "exceptional" or handicapped child than on the normal child.* [Emphasis added.]

Further, the Committee points out that there are local and State funds and other Federal funds available to assist in this process. Any funds available from the Federal Government are clearly in addition to funds provided under this Act and are available to States to assist them in carrying out their responsibilities under State laws, State Constitutions, and the U.S. Constitution, and should be so utilized. The Federal sources which exist and which can assist in this process include approximately 885 million expressly set aside under Title I of the Elementary and Secondary Education Act in addition to the funds available under part A of that Act for handicapped children, $51 million under the set-aside in the Vocational Education Act, $25.7 million under title III of the Elementary and Secondary Education Act, and additional funding available under the Rehabilitation Act, the Head Start Program, social services, and the Developmental Disabilities Act.

The Committee intends that all such Federal funds shall be spent in a way which will assist the States in meeting the priorities and timetables under this Act. The Committee bill requires that a State, in its application for assistance under the Act, shall set forth a description of programs and procedures by which the State or any of its political subdivisions will utilize funds under other Federal programs (including Title I, Title III and IV of the Elementary and Secondary Education Act, the Vocational Education Act, the Rehabilitation Act, other parts of the Education of the Handicapped Act, the Developmental Disabilities Act, and Head Start) in a manner which is consistent with the priorities and timetables and other provisions of the Committee bill. The Committee does not intend to limit or change the specific requirements relating to purposes, administration and expenditure of funds under such laws. However,

under each of these laws funds are received by States and their political subdivisions to provide for the education of and educational services for handicapped children, and, in each case, these funds can be used to assist the States to carry out the priorities and provisions of this Act.

State Educational Agency

The Committee bill requires that the State educational agency be responsible for insuring that all requirements of the Act are carried out, and that all education programs for handicapped children within the State, including all such programs administered by any other State or local agency, must meet State educational agency standards and be under the general supervision of persons responsible for education of handicapped children. This provision is included specifically to assure a single line of responsibility with regard to the education of handicapped children, and to assure that in the implementation of all provisions of this Act and in carrying out the right to education for handicapped children, the State educational agency shall be the responsible agency. Under other provisions of the Committee bill, funds paid to a State for other Federal programs which provide assistance for the education of handicapped children are required to be utilized by the State in a way which is designed to meet the timetables under this Act and the priorities established for serving handicapped children. The Committee expects that the chief State school officer of the State will take all steps necessary to assure the cooperation of other State educational agency personnel in carrying out this requirement.

The Committee considers the establishment of single agency responsibility for assuring the right to education of all handicapped children of paramount importance. Without this requirement, there is an abdication of responsibility for the education of handicapped children. Presently, in many States, responsibility is divided, depending upon the age of the handicapped child, sources of funding, and type of services delivered. While the Committee understands that different agencies may, in fact, deliver services, the responsibility must remain in a central agency overseeing the education of handicapped children, so that failure to deliver services or the violation of the rights of handicapped children is squarely the responsibility of one agency.

Consultation Procedures

The Committee bill deletes the provision requiring a planning and advisory panel appointed by the Governor (as previously required in S. 6 as introduced), and replaces that provision with a requirement that the State establish procedures for consultation with individuals involved in or concerned with the education of handicapped children, stipulating that such procedures must assure consultation with handicapped individuals and parents of handicapped children. In addition, the provision requires that public hearings be conducted to provide the opportunity for comment from the general public on procedures proposed with regard to the consultation process, applications for assistance under this Act, and on any rules and regulations the State proposes to adopt to carry out its responsibilities under this Act. The Committee intends that such procedures for consultation should provide for an ongoing process of consultation and comment by interested

individuals and organizations throughout the State in all matters with respect to the implementation of provisions of this Act at both the State and local educational agency level.

The State in carrying out this provision should assure that procedures are adopted that will provide a mechanism to receive comment and counsel from a broad cross-section of individuals interested in the education of handicapped children (but particularly with regard to handicapped individuals themselves and parents of handicapped children), and that in any public hearings held, arrangements should be made to assure representative input, including making such arrangements with respect to accessibility and communication which will assure the ability for comment by handicapped individuals.

Compliance

S. 6, as introduced, provided a three-fold mechanism for compliance: (1) ongoing evaluation and review (including review of a State's eligibility and its annual application) by the Commissioner of Education with regard to progress or failure to comply with provisions of the Act; (2) standard withholding and judicial review mechanisms upon a finding by the Commissioner of substantial failure to comply with provisions of the Act on the part of a State educational agency or local educational agencies; and (3) review of State and local educational agency actions by the planning and advisory panel, which panel was to report any findings of substantial failure to comply with the provisions of the Act to the Commissioner of Education. Testimony before the Committee on these provisions raised a series of questions with regard to the effectiveness of such procedures in seeking compliance with various provisions of the Act.

Specifically, these questions centered on: (1) whether the annual application review mechanism was an effective means by which the Commissioner of Education could base a withholding of funds on substantial failure; (2) whether the relationship between local, State, and Federal education agencies is sufficiently close and whether the number of State and local educational agencies is too large to assure effective compliance through a series of orderly steps established and monitored by the Federal Government on an ongoing basis and; (3) whether a basically Federal compliance mechanism results in an adversary rather than a cooperative relationship. Testimony from interested organizations and groups strongly supported the need for a compliance mechanism which could serve both as a focal point for complaints and conflict resolution and as a review mechanism for the procedural protections contained within existing law as well as those additional safeguards proposed in S. 6. In reviewing this testimony, the Committee considered three basic methods for achieving compliance: (1) the provisions of the bill as introduced which provided a broad review mechanism; (2) the possibility of a Federal Government compliance mechanism separate and distinct from the application review and fund distribution mechanism; and (3) a State level mechanism which would permit greater flexibility in the process of seeking compliance with various provisions of the bill.

In view of the substantial responsibilities placed upon the States for assuring the right to education for handicapped children, the

Committee determined that a State compliance mechanism represented a way of achieving this compliance.

The Committee bill provides that as a condition of eligibility there be established in the State an entity for insuring compliance with the provisions of the Act. Under the provisions of the Committee bill, such entity shall (1) conduct periodic evaluations in all areas of the State to determine whether the State educational agency and local educational agencies are in full compliance, (2) be empowered to receive complaints with respect to alleged violations of the requirements of the Act and provide notice and an opportunity for hearings with respect to such complaints, (3) make determinations with respect to alleged violations, and, upon finding that a violation has occurred, notify the State educational agency and the appropriate local educational agency of such finding, and (4) take appropriate steps to assure that such violations are corrected. Such steps taken by the entity to correct violations may include, for example, negotiations, conciliation and mediation with a non-complying local educational agency. If after a reasonable period of time, adequate steps have not been taken to correct such violations, the compliance entity must provide notice to the State educational agency, the appropriate local educational agency, and the State's chief executive officer and inform the Commissioner of Education who shall take appropriate action with regard to his withholding of payments under this Act.

The Committee bill provides some flexibility to each State in setting up or establishing such an entity. The State may utilize an existing mechanism if it meets the requirements of the Act, or may alter an existing mechanism to meet such requirements. The Committee bill stipulates that at least half of the membership shall be individuals who are handicapped or who are parents or guardians of handicapped children. The Committee bill further provides that all members must be qualified by training or experience to carry out the responsibilities of the entity. The Committee believes that the entity must be composed of individuals who have an expertise in the education of handicapped children, have familiarity with the legal requirements of due process protections, or have knowledge of methods of evaluating progress of local and State educational agency efforts to provide a free appropriate public education to all handicapped children. The Committee wishes to clarify, however, that it does not intend the existence of such an entity to limit the right of individuals to seek redress of grievances through other avenues, such as bringing civil action in Federal or State courts to protect and enforce the rights of handicapped children under applicable law.

Classification Procedures

The Committee is deeply concerned about practices and procedures which result in classifying children as having handicapping conditions when, in fact, they do not have such conditions. These practices have been brought to the Committee's attention at hearings and in recently published studies (notably the report of the Children's Defense Fund entitled, *Children Out of School in America.*)

At least three major issues are of concern with respect to problems of identification and classification: (1) the misuse of appropriate

identification and classification data within the educational process itself; (2) discriminatory treatment as the result of the identification of a handicapping condition; and (3) misuse of identification procedures or methods which results in erroneous classification of a child as having a handicapping condition.

In all of these cases abuses have occurred, and the child suffers as a result. Yet, each of these abuses are distinct, and must be effectively dealt with in different ways. In the educational process, the appropriate identification of handicapping conditions must take place in order to assure that a child receives appropriate services designed to meet his or her needs. Such identification must also take place in order that a State or local educational agency may plan for the provision of appropriate services to meet the child's unique needs.

In the absence of this process and without the provision of appropriate services, the educational process for a handicapped child is totally inadequate and inappropriate. There is nothing in this process, however, which justifies or necessitates the carrying over of these classification "labels" into the classroom educational process itself such that the child becomes thereby labelled as having a particular "handicap" which for that reason, sets the child apart as being "different". In this regard, the Committee believes that the greatest possible care must be taken to assure that the identification and classification process is utilized solely for designing an individually tailored educational program for each handicapped child. The Committee directs the Commissioner and each State educational agency to assure that information required for the planning and provision of special education and related services, and the administration of such services, does not get carried over into the educational process in a way which results in distinguishing handicapped children as having lesser rights. The Committee has designed the individualized planning conferences as one method to prevent labelling or misclassification. Furthermore, the Committee points out that due process requirements in existing law were designed specifically to protect against this abuse, and should be examined by the Commissioner and the State educational agency to assure that they are effective in this regard.

Central to this issue is the discriminatory treatment which results from the identification of handicapping conditions. Disabled witnesses testifying before the Committee made this point absolutely clear. They testified to the fact that they recognized the need for the identification and labelling of their handicapping conditions, if that identification and label meant that appropriate educational services would be forthcoming. Speaking to the problems of labelling children as "handicapped," they pointed out that children with visible handicaps carry with them, throughout their lives, a condition which cannot be disguised and which, in the eyes of some people, may set them apart. As they also pointed out, such classification and identification has too often meant separation, discriminatory treatment, and a reason for failing to provide any services at all. The problem is not the classification itself, since that classification is a necessary tool for designing appropriate instruction. The problem is the stigma that such classification carries with it, and the resulting discriminatory treatment and exclusion which occurs. It is this discriminatory treatment and ex-

clusion which Court cases, State and Federal laws are designed to remedy.

In earlier legislation adopted by this Committee and enacted into law, strong positive action was taken to prohibit discrimination on the basis of handicapping conditions in all programs receiving Federal funds. Regulations implementing this program (section 504 of the Rehabilitation Act of 1973) are in draft form at this time. The Committee takes further steps in this legislation to provide that positive action be taken against erroneous classification of poor, minority and bilingual children and against the invalid use of testing.

In order to prevent the erroneous classification of children for the purposes of receiving funds under this Act, the Committee has taken the following specific actions in the bill.

(1) A limitation is established on the number of children a State may count for purposes of the entitlement. This limitation has been set at 10 percent of a State's population of all children aged three to twenty-one.

(2) A priority is established for providing a free appropriate public education first to handicapped children who are not receiving an education and second to handicapped children with the most severe handicaps who are receiving an inadequate education.

(3) The Commissioner is required within 1 year from the date of enactment to assure certification of data by the State with regard to the number of handicapped children for whom the State is actually providing an education.

These three provisions taken together provide protection against the erroneous classification of children as having handicapping conditions and being counted for the purpose of receiving Federal funds.

Furthermore, the Committee specifically requires the compliance entity to be empowered to receive complaints with regard to erroneous classification and to take all appropriate steps necessary to correct such violations of the Act. As a part of carrying out its responsibilities in this regard, the entity should review all procedures adopted by the State and local educational agency with a view toward eliminating any discriminatory testing and evaluation procedures; and, it should assure that procedural safeguards guaranteed to parents under existing law provide adequate protection against erroneous classification. Further, the Committee bill requires the State to set forth in its annual application the policies and procedures it will take to recover any funds distributed to local educational agencies on the basis of erroneous classifications made or erroneous data supplied by the local educational agency.

Finally, the Committee bill requires the Commissioner, in his annual report to the Congress on the implementation of this Act, to provide the results of his evaluation of the effectiveness of procedures undertaken by the States to prevent erroneous classification of children as eligible to be counted under this act and to report to the Congress on the actions undertaken by him to eliminate misclassification.

The Committee strongly emphasizes that when an erroneous classification is determined to have been made by a local educational agency or State Education agency, all necessary steps to correct that violation shall be taken by the compliance entity including the removal of

the child from the agency count, the expunging of any information relating to that misclassification from the child's school records, and the resulting determination by the entity that the educational agency has taken all necessary steps to provide an appropriate educational program for the child (including any additional educational services which may be needed).

Amendments to Due Process Requirements

The Committee bill makes a number of changes in the provisions of existing law relating to procedural safeguards provided to parents in decisions regarding the identification, evaluation, and educational placement of handicapped children. These amendments: (1) clarify that prior notice shall be given to the parents or guardian of the child when the local or State educational agency proposes to initiate the educational placement of the child; (2) clarify that the impartial due process hearing is not to be conducted by an employee of the State or local educational agency directly involved in the education or care of the child; and (3) provide additional requirements with regard to testing and evaluation procedures and materials utilized for the purposes of evaluation and placement of a child.

The Committee bill provides that testing and evaluation materials and procedures shall be provided and administered in the child's primary home language or mode of communication (i.e., manual communication) and provides that no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

The Committee is alarmed about the abuses which occur in the testing and evaluation of children, and is concerned that expertise in the proper use of testing and evaluation procedures falls far short of the prolific use and development of testing and evaluation tools. The usefulness and mechanistic ease of testing should not become so paramount in the educational process that the negative effects of such testing are overlooked. The Committee bill provides that the Commissioner shall, in carrying out the provisions of this Act, issue, amend, and revoke such rules and regulations as may be necessary and that no other less formal method of implementing the provisions is authorized. Specifically in this regard, the Committee directs the Commissioner to issue regulations which assure that State and local educational agencies shall establish procedures to ensure that certain conditions are met with regard to testing and evaluation.

These regulations should assure that: (1) tests and other materials used for placement have been properly and professionally evaluated for the specific purpose for which they are being used; (2) no single test or type of test or procedure is used as the sole criterion for placement and that all relevant information with regard to the functional abilities of the child is utilized in the placement determination; and, (3) tests and other evaluation procedures include assessment of specific areas of educational need so that provision of special education and related services can be limited to areas directly related to the child's need, so that broad and unspecific classifications of handicapping conditions do not occur. In particular, such regulations should assure that test selection and administration provide absolute protection that a test administered to a student with a sensory, motor, speech,

hearing, visual, or other communicative disability, or to a student who is bilingual, accurately reflects the child's ability in the area tested and not the child's impaired communication skill or the fact that the child is not skilled in English.

APPLICATION PROCESS

The Committee bill provides that an eligible State shall submit an annual application, setting forth a description of the programs and procedures by which the State will carry out the provisions of the Act and expend funds.

This application shall contain, or be accompanied by, information relating to how funds will be spent to meet the priorities and timetables established, how other Federal funds under other programs providing assistance for the education of handicapped will be spent, procedures undertaken by the State for the development and implementation of a comprehensive in-service training program for general and special education personnel, the method by which States will distribute funds to local educational agencies within the State, and how the State will meet its responsibilities to handicapped children within private schools.

Within State Distribution

As discussed earlier with respect to "within-State" distribution of funds under this Act, the Committee bill provides for a two-fold approach: (A) 40 percent of the funds distributed by a State educational agency shall be distributed to local educational agencies in the State in direct proportion to the number of handicapped children who are in need (i.e., requiring and receiving) of a free appropriate public education within the area served by each such local educational agency, and (B) 60 percent of the funds shall be distributed by a State educational agency in a manner consistent with the priorities for meeting the specified timetables first with respect to handicapped children who are not receiving an education and, second, with respect to handicapped children with the most severe handicaps who are receiving an inadequate education. The Committee bill further provides that in its annual application the State shall set forth policies and procedures which shall demonstrate how such distribution of funds will be accomplished within the State.

The Committee believes that this within-State distribution formula will assure a necessary degree of stability to each local educational agency in providing special education and related services for all handicapped children in the area served by each such agency. At the same time, however, this mechanism assures that each State will have adequate funds available in order to target funds to meet its overall responsibilities in meeting the timetables and priorities established under the Committee bill. In this regard the Committee notes that any State desiring to make an annual application for assistance must meet the eligibility requirements of new section 614 of the Act. These conditions of eligibility clearly specify the timetables and priorities herein discussed and apply throughout the State and govern the activities of the State and local educational agencies (albeit that it is the State which must demonstrate that such conditions are met). Therefore, the

Committee expects and intends that all funds distributed to local educational agencies (both pursuant to the 40 percent proportional distribution method and pursuant to the 60 percent to be distributed by the State agency to meet the timetables and priorities of the bill) will be utilized by such agencies to carry out the timetables and priorities specified in new section 614.

The Committee believes that regulations which the Commissioner shall promulgate under this Act should provide criteria on the basis of which States may allocate funds to localities consistent with the priorities and timetables of the Act. The Committee expects that the States will provide technical assistance in the development of procedures to guide the local educational agencies in identifying, locating and evaluating handicapped children residing in the jurisdiction according to due process and evaluation standards set forth by the Office of Education and the States. Further, these procedures should provide guidelines for identifying and certifying the actual number of handicapped children currently receiving educational services, and identifying and certifying the number of handicapped children in need of appropriate educational services. On the basis of this information, the State will be able to determine if the local educational agency is eligible, within the priorities of this Act, for additional funds to meet the timetables and priorities of the Act. It is expected that the local agency would provide a plan with a timetable which will demonstrate how it will achieve full educational opportunities for all handicapped children in its jurisdiction, including a description of the nature of programs and services it will establish, the personnel and personnel training needed to provide the services, and procedures established for the involvement of parents in the planning and provision of services, including steps it will take to employ and advance in employment qualified handicapped individuals, and steps it will take to remove architectural barriers. Finally, the Committee expects that the State will set forth procedures to assist the local educational agencies in evaluating the effectiveness of services, and should specifically require assurances for nonsupplanting and comparability in the use of funds under the Act.

As previously stated, the Committee intends that all funds be utilized within the State in such a way as assures that the timetables are met, and that appropriate educational programing is provided for all handicapped children. The Committee, by adopting the mechanism for within State distribution, intends to encourage arrangements between local educational agencies which are directed toward providing appropriate and effective services for handicapped children. Local educational agencies, the State educational agency and the Commissioner of Education should assure that combination of school districts and other special arrangements are encouraged when such arrangements would more effectively meet the needs of handicapped children.

Private School Children

The Committee bill provides that the State shall, in the annual application, set forth policies and procedures to assure that, to the extent consistent with the number and location of handicapped children in the State who are enrolled in non-public elementary and secondary schools, provision is made for the participation of such

children in special education and related services. The Committee has further provided that a State may count for purposes of receiving payments to which it is entitled all handicapped children, aged three to twenty-one, who are receiving special education and related services within the State. If the State is providing, under section 615(a)(4)(A), or has provided, under a similar provision of existing law, special education and related services (in the fiscal year for which the count is being made) to a child or children enrolled in non-public schools, such child or children are to be counted under the entitlement formula under section 612.

Furthermore, the Committee bill stipulates that special education and related services should be available to all children within the State as a matter of public responsibility. Thus, the bill requires that if a State or local educational agency has placed or referred the child to a private school or to another school or facility inside or outside of the State or local jurisdiction because the State or local educational agency did not have an appropriate program for the child, then the State or local educational agency remains financially responsible for that child's education. The Committee points out that all provisions of the Act including those requiring due process protections, the provision of individualized planning conferences, and the provision of services in the least restrictive environment extend to children so served by a State or local educational agency. If a parent contends that he or she has been forced, at that parent's own expense, to seek private schooling for the child because an appropriate program does not exist within the local educational agency responsible for the child's education and the local educational agency disagrees, that disagreement and the question of who remains financially responsible is a matter to which the due process procedures established under section 614(5) applies.

Under the Committee bill a State's application shall provide that special education and related services shall be provided at no cost to the parents of a handicapped child. This provision is designed to insure that students served by private facilities are treated equally with those in public schools and is not to be construed to prohibit charges by the educational agency to insurors, public programs, and others for hospital care, health services, rehabilitation, and other non-educational services. States are encouraged to utilize all sources of support for comprehensive services for handicapped students. It should be emphasized, however, that in no case should such charges result in cost to the parents or guardian, or the denial or diminition of services to the child.

Nonsupplanting

The Committee bill requires the State to provide assurance, satisfactory to the Commissioner, that Federal funds available under the Act will be used to supplement and increase the level of State and local funds expended for the education of handicapped children, and in no case, shall funds under this Act be used to supplant such State and local funds. However, the bill also provides authority to the Commissioner to waive, in part, the requirement of nonsupplanting if the

State provides clear and convincing evidence that all handicapped children within the State have available to them a free appropriate public education. This waiver authority is included consistent with the intent of the bill to provide an entitlement per handicapped child of $300. Clear and convincing evidence in this instance shall include: (1) a determination by the Commissioner that all data and evidence presented by the State to demonstrate that all handicapped children are receiving a free appropriate public education is accurate, based on an audit done by the Commissioner; (2) a determination that the location and identification procedures utilized by the State were valid and enabled the State to discover all handicapped children within the State; (3) a determination that all handicapped children within public and private residential schools and institutions have available to them a free appropriate public education; and (4) that the State has met all requirements of the Act in full.

Inservice Training

In reviewing the testimony of hearing on this bill, it was pointed out that in order to pursue a goal of least restrictive environment for handicapped children, the concept of mainstreaming must be clearly understood. If the integration of handicapped children into the classroom is to be accomplished, several important changes must take place in that classroom. A most important element is the teacher, who will be responsible for the management of the handicapped children in that classroom. The fact can be well documented that appropriate educational services to handicapped children must be delivered by qualified personnel trained for that specific purpose.

The Committee is aware that there is a shortage of fully qualified personnel trained to serve all handicapped children in educational programs. Therefore, the Committee has determined that a program of continuous inservice training be undertaken to provide general and support personnel with the basic requirements needed to serve handicapped children in the classroom.

High quality educational services for all handicapped children will require a greater number of support personnel, as well as teachers. The supportive services should be provided by trained occupational therapists, speech therapists, psychologists, social workers and other appropriately trained personnel.

The Committee bill requires that a State submit in its annual application a description of the programs and procedures to develop and carry out a comprehensive system of personnel development which shall include the inservice training of general and special education instructional and support personnel and to assure that appropriately trained personnel are available to carry out the purposes of the Act.

The Committee heard testimony presented by the California State Department of Education with regard to an in-State system of inservice training it has adopted to be carried out by the State educational agency. This system of personnel training is important in upgrading skills of personnel already providing services for handi-

capped children, and in providing training to general educational personnel in school systems where "mainstreaming" of handicapped children is taking place. Whereas the preservice training of personnel may not be the responsibility of State educational agencies, the Committee believes that inservice training is clearly a necessary component of long-range planning for a State.

The additional State plan requirements adopted last year in amendments to the Education of the Handicapped Act required the States, in setting forth their long-range plan for the education of all handicapped children, to describe the number of and kind of personnel necessary to meet this goal. This plan, which is to be submitted by August 21, 1975, should provide the base of data necessary for States to begin their inservice training system.

The Committee bill does not provide a separate authorization of appropriations to carry out this inservice training requirement. However, funds are available under the Committee bill from the State administrative set-aside to carry out this requirement. Furthermore, in order to reach the timetable of the bill and to satisfy priorities under the bill for serving handicapped children who are not receiving an education and for serving handicapped children with the most severe handicaps, the inservice training of personnel may be a necessary component of local educational agency programs. The Committee therefore believes that where inservice training of school personnel may substantially contribute to meeting the overall goals of providing education for all handicapped children by the dates contained in the Committee bill and to meeting the priorities for service in the bill, then funds may be provided for inservice training as an integral component of an overall application from a local educational agency. The Committee points out that funds for preservice training of special education personnel are available under the authority of Part D of the Education of the Handicapped Act and that funding for preservice training of other personnel is available under other provisions of education law. The Committee therefore does not intend funds under Part B to be used for preservice training.

Payments

Consistent with existing law, the Committee bill provides that 5 percent of the total of the amounts paid under the Act for any fiscal year to the State or $200,000 (whichever is greater) may be paid to the States for administration and planning. For Guam, American Samoa, the Virgin Islands, or the Trust Territory of the Pacific Islands, the Committee bill provides such 5 percent or $60,000, whichever is greater. This dollar figure is an increase from $35,000 in existing law. The Committee believes that such an increase is necessary to assist the territories in carrying out their responsibilities under the Act.

ADMINISTRATION AND EVALUATION

Administration

The Committee bill establishes new sections of the Education of the Handicapped Act relating to administration and evaluation by the Commissioner of Education. These provisions require the Commis-

sioner to render all necessary technical assistance to provide short-term training and institutes as necessary, to disseminate information, to conduct evaluations of efforts of the State to provide a free appropriate public education and to comply with the provisions of this Act. The Commissioner is directed to collect such information as he may need to carry out such evaluation (including specific information he is directed to collect by the Committee) and to conduct specific evaluations related to provisions of the Act.

With regard to administration, the Committee bill directs the Commissioner to insure that within one year from date of enactment each State shall provide certification of the actual number of handicapped children receiving an education. It further directs the Commissioner to prescribe, through regulations, a uniform financial report to be utilized by the States in submitting annual applications under the Act. The Committee believes that such reports are necessary to assist the Commissioner in assuring that funds are spent in such a way which meets the priorities and timetables under the Act. The Committee further points out that it has directed the Commissioner to collect programmatic information and data, specifically with regard to the number of handicapped children participating in programs assisted under this Act, their handicapping conditions, the number of children with no education or in need of improved educational services, and the amount of Federal, State and local expenditures specifically used to provide special education programs. In order to protect against erroneous classification and to provide adequate program review to prevent such misclassification, the Committee directs the Commissioner to work directly with the Director of the Office of Civil Rights to assure such program information is available for adequate programmatic review and evaluation.

The Committee bill, in addition, directs the Commissioner to issue, amend, and revoke such rules and regulations as may be necessary to carry out the provisions of the Act and specifically prohibits the use of any less formal method of implementing these provisions. This directive is included to assure that regulations are written to carry out the Act so that State and local educational agencies and other interested individuals and organizations have available to them a formal method of comment on proposed implementation and in order to provide a legal basis for actions taken by the Commissioner to carry out the Act. The Committee further notes that all provisions of section 431 of the General Education Provisions Act (relating to comment periods, a schedule for regulations, and a time period for implementing provisions of an applicable law) apply in full to this Act.

The Committee bill further provides a general provision requiring regulations to protect the confidentiality of personally identifiable data, information and records collected or maintained by the Commissioner and State and local educational agencies. Existing law provides a similar provision relating to additional State plan requirements. Because the Committee bill will require additional data collection and record keeping on the part of all educational authorities,

this provision has been included to assure that the confidentiality of such information is protected. The Committee further points out that all provisions relating to the protection of rights and privacy of parents and students under section 438 of the General Education Provisions Act apply in full to this Act.

The Committee bill requires each State in its annual application to submit a description of the programs and procedures by which other Federal funds received by the State for the education of handicapped children will be utilized by the State or its political subdivisions in a manner which is consistent with the purpose of this Act. In order to assure that such provision can be effectively implemented by the States and to provide additional cooperation of Federal officers responsible for the administration of such laws, the Committee bill directs the Secretary of the Department of Health, Education, and Welfare to establish a task force to develop guidelines which shall be implemented by him. Task force members as designated include representatives of the Office of Education, the National Institute of Education, the Rehabilitation Services Administration, the Office of Child Development, the Office of the Assistant Secretary of Health, and the Office of Civil Rights. The Committee expects these representatives to develop guidelines which will be useful to the Office of Education and to the States in implementing the provisions of this Act relating to the use of other Federal funds providing assistance to the State or any of its political subdivisions for the education of handicapped children in order to assure the provision of a free appropriate public education for all handicapped children, consistent with the priorities and timetables established in this Act.

Evaluation

The Committee bill directs the Commissioner to provide for evaluation of programs administered under this Act, and further directs him to conduct (directly, or by grant or contract) such studies, investigations and evaluations as necessary for the effective implementation of the provisions of the Act. Specifically, the Committee bill requires the Commissioner to submit (within 120 days after the close of the fiscal year) an annual report which shall provide an evaluation of progress made toward the provision of a free appropriate public education for all handicapped children, an evaluation of the procedures adopted to assure special education and related services in the least restrictive environment commensurate with the child's needs, and an evaluation of the effectiveness of the procedures undertaken by the States to prevent erroneous classification of children as eligible under the Act (including any actions he has taken to carry out his responsibilities to prevent erroneous classification). The Committee intends to very and progress being made by a State to provide a free appropriate public education for all handicapped children.

Furthermore, the Committee directs the Commissioner to undertake a comprehensive study of objective criteria and evaluation procedures to determine the effectiveness of special education and related services provided to handicapped children. Such criteria and procedures shall

be designed in order that they may be utilized in conjunction with the individualized data available through the individualized planning conferences.

S. 6 as introduced required that State and local educational agencies carry out such evaluations. The Committee deletes this language from the section relating to the individualized planning conference and directs the Commissioner, in consultation with State and local educational agencies, to develop criteria procedures by which more individualized evaluation may be done to assess the effectiveness of special education and related services provided to handicapped children.

The Committee understands that projects currently being funded by the Bureau of Education for the Handicapped, and other projects are underway which are operating individualized planning conferences with evaluation procedures. The Committee is very interested in the possible use of data which may be available through such conferences which could be used to assist in the evaluation of special education and related services for handicapped children, and has directed the Commissioner to provide a comprehensive study of objective criteria and evaluation procedures which could be utilized by State and local educational agencies.

The Committee bill authorizes the Commissioner to hire qualified personnel to conduct data collection and evaluation procedures and to carry out his duties under the Act. The Committee believes that the Office of Education must provide additional and improved staffing to carry out its implementation efforts relating to the education of all handicapped children, and has thus authorized the hiring of up to twenty additional staff persons to be assigned to the Bureau of Education for the Handicapped to carry out these purposes. In carrying out the data collection, investigation, and evaluation required by this Act, the Committee expects the Commissioner to assign responsibility for these tasks to the Bureau of Education for the Handicapped, so that such data collection and evaluation will be closely coordinated with program and technical assistance. In order to provide sufficient funds to carry out the necessary evaluations under the Act, the Committee authorizes the appropriations of $2.5 million for fiscal year 1976, $3.5 million for fiscal year 1977, $5 million for fiscal year 1978, and $7.5 million for fiscal year 1979. The Committee directs the Commissioner to consult with the States with regard to all of his evaluation responsibilities under this Act, and expects the Commissioner to provide technical assistance to the States to develop and improve their own evaluation capabilities.

Affirmative Action

Section 5(a) of the Committee bill provides that each State agency and other recipient of assistance under the Education of the Handicapped Act shall take affirmative action to employ and advance in employment qualified handicapped individuals who are covered under section 503 of the Rehabilitation Act of 1973 and on the same terms

and conditions as set forth in such section 503 (relating to the affirmative action requirement under Federal contracts and subcontracts).

The Committee notes with respect to the affirmative action program required of each Federal department, agency, and instrumentality in section 501 of the Rehabilitation Act of 1973, that those agencies which administer programs affecting handicapped individuals (including the Department of Health, Education and Welfare, the Department of Labor, the Civil Service Commission, and the Architectural and Transportation Barriers Compliance Board) must bear a special responsibility to provide exemplary affirmative action programs to employ and advance in employment qualified handicapped individuals, especially in those administrative units responsible for these programs. Their programs should set a high standard which can be emulated by agencies which are not so directly and intimately involved in the provision of services to, or the protection of, handicapped persons.

Similarly, those State agencies which administer programs for handicapped individuals, along with local educational agencies and other public and private agencies and facilities which provide services through grants under the Education of the Handicapped Act, are expected to adopt strong affirmative action programs which are at least equivalent to those now being developed for Federal agencies. Moreover, these State and local agencies and organizations should be held to the same exemplary standard for affirmative action required of the Federal agencies with particular responsibilities for programs affecting handicapped individuals, in order to serve as a model for compliance with the affirmative action that is required of all Federal contractors and all Federal subcontractors under section 503 of the Rehabilitation Act.

Grants for the Removal of Architectural Barriers

The Committee bill includes a provision authorizing the Commissioner to make grants to State and local educational agencies for the purpose of altering existing buildings and equipment to eliminate architectural barriers, consistent with standards under Public Law 90–480. No other provision of existing law specifically provides such authority to the Commissioner. The Committee believes that the removal of such barriers is necessary to assure certain handicapped children a free appropriate public education in the least restrictive environment and that barriers to accessibility should not be the cause which prevents appropriate education of such children with their nonhandicapped peers. Thus, the Committee directs the Commissioner to request sufficient funds in his budget to provide authority to make such grants. In carrying out his authority under this section with regard to publishing regulations for applications for grants and in approving such grants, the Committee directs the Commissioner to consult with the Architectural and Transportation Barriers Compliance Board, established pursuant to Public Law 93–112, the Rehabilitation Act of 1973.

Cost Estimates Pursuant to Section 252 of the Legislative Reorganization Act of 1970

In accordance with section 252(a) of the Legislative Reorganization Act of 1970 (Public Law 91–510, 91st Congress), the Committee estimates that if all funds authorized were appropriated during fiscal year 1976 and the succeeding four fiscal years, the five year costs occasioned by S.6, as reported, would be as follows:

EDUCATION FOR ALL HANDICAPPED CHILDREN ACT (AS REPORTED)

[In millions of dollars]

	Fiscal years—				
	1976	1977	1978	1979	1980
State entitlements for education of handicapped children	$666	[1] $1,172	[1] $1,810	[1] $2,129	
Payments to States for administration and planning	[2]	[3] 53.4	[3] 90.5	[3] 106	
Administration	[4] [ ]	[4] 1	[4] 1	[4] 1	
Evaluation	2.5	3.5	5	7.5	
Grants for removal of architectural barriers	[5]	[5]	[5]	[5]	
Total	669.5	1,229.9	1,906.5	2,243.5	

Note: Grand total, $6,117.

[1] The formula is based on an entitlement of $300 per each handicapped child who is receiving an education. The figures for each fiscal year assume full funding of full amount ($300) per each child served. The committee has estimated the number of children served for fiscal year 1977 on the basis of the most recent available data (for school year 1974–75). In the succeeding fiscal years, the committee has estimated the number of children to be served by assuming an equal increment of number of children served based on the timetable contained in the legislation. Each figure for each fiscal year assumes that all funds thus authorized will be appropriated.

[2] States may use 5 percent or $200,000 (or 5 percent or $35,000 for territories) whichever is greater, for administration and planning from the amounts the State receives under payments to States.

[3] S. 6 authorizes such sums, up to 5 percent or $200,000 (or 5 percent or $60,000 for territories) for payments to States for administration and planning.

[4] Such sums, not in excess of one-quarter of 1 percent of the amounts appropriated for payments to States, or $1 million, whichever is greater.

[5] Such sums.

Tabulation of Votes Cast in Committee

Pursuant to section 133(b) of the Legislative Reorganization Act of 1946, as amended, the following is a tabulation of votes of the Members of the Committee on Labor and Public Welfare on a motion to report favorably to the Senate S. 6, as amended by Committee substitute and title amendment, (adopted: 15 yeas, 0 nays), as follows:

Yeas	*Nays*
Mr. Williams	0
Mr. Randolph	
Mr. Pell	
Mr. Kennedy	
Mr. Nelson	
Mr. Mondale	
Mr. Eagleton	
Mr. Cranston	
Mr. Hathaway	
Mr. Javits	
Mr. Schweiker	
Mr. Taft	
Mr. Beall	
Mr. Stafford	
Mr. Laxalt	

Section-by-Section Analysis of S. 6 as Reported

Section 1

Establishes the title of the proposed Act as "The Education for all Handicapped Children Act."

Section 2

Subsection (a) amends subsection (a) of section 614 of the Education Amendments of 1974, which added a new section 611 to the Education of the Handicapped Act (hereafter in this analysis referred to as "the Act") effective for the Fiscal Year 1975 only, to extend the provisions of that section 611 through Fiscal Year 1976.

Subsection (b) amends subsection (b) of section 614 of the Education Amendments of 1974, which added a new section 612 to the Education of the Handicapped Act effective for the Fiscal Year 1975 only, to extend the provisions of that section 612 through Fiscal Year 1976.

Subsection (c) amends subsection (c) of section 614 of the Education Amendments of 1974, which inserted in the first sentence of present section 613(a) of the Education of the Handicapped Act the clause "is entitled to receive payments" in lieu of "desires to receive grants" effective for the Fiscal Year 1975 only, to extend the insertion of that clause in present section 613(a) through Fiscal Year 1976.

Subsection (d) Paragraph (1) amends paragraph (2) of subsection (c) of present section 611 of the Education of the Handicapped Act as added by section 614(a) of the Education Amendments of 1974 effective for the Fiscal Year 1975 only, to extend the entitlement to grants under that paragraph (2) of subsection (c) of that section 611 through Fiscal Year 1976.

Paragraph (2) amends subsection (d) of present section 611 of the Education of the Handicapped Act, as added by section 614(a) of the Education Amendments of 1974 effective for the Fiscal Year 1975 only, to extend the authorization for the Commissioner to make certain payments under that subsection (d) of that section 611 through Fiscal Year 1976.

Paragraph (3) amends subsection (a) of present section 612 of the Education of the Handicapped Act as amended by the Education Amendments of 1974, effective for Fiscal Year 1975 only, to extend that subsection through fiscal year 1976 and to add a new sentence at the end of that subsection providing that sums appropriated for Fiscal Year 1976 shall be made available to States and allocated to each State on the basis of unsatisfied entitlements under section 611, which section was added by section 614(a) of the Education Amendments of 1974 and which section is extended by the Committee bill through Fiscal Year 1976, in an amount equal to the amount each such State received from the appropriation for Part B in Fiscal Year 1975.

Section 3

Subsection (a) Paragraph (1) redesignates present section 601 of the Education of the Handicapped Act (which establishes the short title of that Act) as section 600.

Paragraph (2) adds to the Education of the Handicapped Act after section 600 as redesignated by paragraph (1) of this subsection, a new section 601, entitled "Statement of Purpose," as follows:

Subsection (a) of the new section 601. Outlines the findings of the Congress that (1) there are more than eight million handicapped children in the United States today, (2) only a few school systems fully meet the special educational needs of these children, (3) more than half of these estimated eight million handicapped children do not receive services which will provide them equal educational opportunity and more than one million of these children are excluded entirely from the public school system, (4) inadequate educational services force families of handcapped children to seek such services outside the public school system at substantial cost to those families, (5) developments in the field of special education have advanced to the point that public school systems can, if adequately funded, provide equal educational opportunty for handicapped children, (6) present financial resources of state and local educational agencies are inadequate to meet the special educational needs of all handicapped children, and (7) in order to assure the equal protection of the laws the Federal Government must assist State and local educational agencies in fulfillng their responsibility to meet the educational needs of all handicapped children.

Subsection (b) of new section 601 states that the purpose of this title is to insure that all handicapped children have a free appropriate public education (as that term is defined in paragraph (8) of the new section 602 of the Act as amended by subsection (b) of section 3 of the Committee bill) available to them within a specified time period (which time period is specified in clause (B) of paragraph (2) of new section 614 added to the Act by section 4 of the Committee bill and requires, with certain exceptions, that a free appropriate public education be available to all handicapped children between the ages of three and eighteen in a State no later than September 1, 1978 and to all handicapped children between the ages of three and twenty-one in a State no later than September 1, 1980), to insure the protection and the rights of handicapped children and their parents or guardians, to relieve the fiscal burden placed on the States and l[illegible]alities when they provide for the education of all handicapped children, and to assess and assure that the efforts made by the States (as required in the Committee bill) to educate all handicapped children are effective.

Subsection (b). Amends present section 602 of the Act which defines certain terms. The terms "Advisory Committee", "construction", "Commissioner", "elementary school", "institution of higher education", "local educational agency", "nonprofit", "research and related purposes", "secondary school", "Secretary", "State", and "State educational agency" are defined identically as in present section 602. Additional terms are defined in new section 602, as follows:

(1) "handicapped children," which is defined as in present section 602 but replaces the term "crippled" with the term "orthopedically impaired" and adds the term "children with specific learning disabilities" (which term, "children with specific learning disabilities", is added to the present section 602 by this new section 602 and is strictly defined in this new section);

(2) "children with specific learning disabilities," which is defined as children having a disorder in one or more basic psychological processes involved in understanding or using spoken or written language but specifically excluding those children having learning problems from visual, hearing or motor handicaps, from mental retardation, from emotional disturbances, or from economic, cultural, or environmental deprivation;

(3) "equipment", which is defined identically as in present section 602 of the Act but adding the term "telecommunications, sensory, and other technological aids and devices";

(4) "free appropriate public education", which is defined as special education and related services (which terms, "special education" and "related services" are added to the present section 602 by this new section 602 and which are specifically defined in this new section) to be provided at public expense, without charge to the parents or guardian of a handicapped child, under public supervision and direction, which education includes an appropriate pre-school, elementary or secondary school education in the applicable State and meeting the standards of the State educational agency, and which education is provided in conformance with an individualized planning conference (as such individualized planning conference is a specifically defined term added to present section 602 by the new section 602 and required to pursuant to paragraph (4) of new section 614, as added by section 4 of the Committee bill);

(5) "individualized planning conference", which is defined as a meeting or meetings specifically for the purpose of developing a written statement of (A) a handicapped child's present level of educational performance, (B) the short term instructional objectives which are expected and sought to be achieved in the education of the handicapped child, (C) the specific educational services to be provided to the handicapped child and the extent to which such child is to be integrated into the regular classroom and school program of non-handicapped children, and (D) the expected date for the initiation and duration of educational services for the handicapped child. Such written statement shall be developed with the joint participation of a local educational agency representative who must be qualified to provide or supervise specially designed instruction which meets the unique needs of handicapped children, the teacher (or teachers) of the child, the handicapped child's parents or guardian, and, where appropriate, the handicapped child himself;

(6) "related services", which is defined as transportation, developmental, corrective, and supportive services (specifically including at least speech pathology and audiology, psychological services, counseling services, physical and occupational therapy, and recreation) necessary for a handicapped child to fully benefit from special education, and including early identification and assessment of handicapping conditions in children and provision of such services to such children;

(7) "Special education," which is defined as specially designed instruction (including physical education) which will meet the unique needs of a handicapped child and is provided at no cost to parents or guardian of a handicapped child.

Section 4

Substitutes a new Part B in the Education of the Handicapped Act for the existing Part B (Assistance to States for Education of Handicapped Children), which by virtue of section 6 of the Committee bill, generally, does not take effect until July 1, 1976. The new Part B, as substituted by this section of the Committee bill and entitled "Assistance to States for the Education of All Handicapped Children", is explained as follows:

New section 611 establishes the duration of the new Part B program from July 1, 1976 and ending September 30, 1979 and, for that time period, requires the Commissioner to make payments to State educational agencies for grants on the basis of entitlements (established under new section 612) for the purpose of assisting States in providing full educational opportunity for all handicapped children. This new section 611 also specifically states that payments made may be used for the early identification and assessment of handicapping conditions in children between the ages birth to three years.

New section 612 establishes a new State entitlement grant formula which replaces the entitlement grant formula in present section 611 (as in effect for fiscal years 1975 and 1976 by virtue of the amendments made by section 2 of the Committee bill).

Subsection (a) of this new section 612 requires the Commissioner to make payments to States pursuant to the provisions of new Part B and for the purposes set forth in new section 611, as added by this section 4 of the Committee bill, to assist the States in providing full educational opportunity for all handicapped children.

Paragraph (1) of subsection (b) of new section 612 establishes a new formula (on an entitlement basis) for grants to each State. The maximum grant to which each State shall be entitled shall be the product of—

(A) the number of handicapped children aged three to twenty-one in that State who are actually receiving special education and related services, which number shall be based on the most satisfactory data available for the most recent fiscal year:

multiplied by—

(B) $300.

Paragraph (2) of subsection (b) of new section 612 places a limitation on the number of handicapped children each State may count for purposes of determining its basic entitlement under clause (A) of paragraph (1) of this subsection. Under this limitation, as part of determining its entitlement pursuant to clause (A) of paragraph (1) of subsection (b) of the new section 612, no State may count as handicapped children aged three to twenty-one, inclusive, more than ten percent of all children aged three to twenty-one, inclusive, in that State for the applicable fiscal year.

Paragraph (3) of subsection (b) of new section 612 specifies that the term "State" as used in subsection (b) of this new section 612 does not include Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

Paragraph (1) of subsection (c) of new section 612 specifies that the jurisdiction to which the entire subsection (c) applies are Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

Paragraph (2) of subsection (c) of new section 612 entitles each of the jurisdictions specified in paragraph (1) of subsection (c) of new section 612 to a grant (subject, however, to an aggregate limitation for all such specified jurisdictions) in any fiscal year for the purposes stated in new section 611 in an amount to be determined by the Commissioner of Education, according to criteria established by him through regulations. This paragraph (2) also establishes a limitation on the aggregate amount to which all such jurisdictions are entitled which amount is not to exceed 1 percent of the total to which all States are entitled for that fiscal year under subsection (b) of new section 612. Further, paragraph (2) provides that to the extent that the amounts for each jurisdiction, as determined by the Commissioner pursuant to the first sentence of this paragraph (2), exceed the 1 percent limitation on the aggregate amounts for all such jurisdictions, the entitlement for each jurisdiction shall be proportionally reduced to meet the 1 percent limitation on the aggregate amount.

Subsection (d) of new section 612 authorizes the Commissioner of Education, upon terms and pursuant to such criteria he determines will best carry out the purposes of the new part B, to make payments, not to exceed 1 percent of the aggregate amounts to which States are entitled in the applicable fiscal year under subsection (b) of new section 612, to the Secretary of the Interior in accordance with the need for assisting in the education of handicapped children on reservations serviced by Department of the Interior elementary and secondary schools which are operated for Indian children.

New section 613 establishes the method by which the sums appropriated pursuant to the new Part B shall be made available to States and allocated to each State.

Subsection (a) of new section 613 provides that sums appropriated under the new Part B for each fiscal year shall be made available to States and allocated to each State, on the basis of unsatisfied entitlements under new section 612, in an amount equal to the amount each State received from appropriations for Part B for the preceding fiscal year. Thus, from the sums appropriated in any fiscal year under the new Part B, each State will receive in each such fiscal year at least the amount it received in the prior fiscal year.

Subsection (b) of new section 613 provides that any sums appropriated to carry out the new Part B which remain after allocations are made under subsection (a) of this new section shall be made in accordance with the entitlements are unsatisfied ratably reduced. Thus, after each State has received, from the sums appropriated in any fiscal year under the new Part B, the amount it received in the prior fiscal year, each State will receive the amount to which it is entitled under new section 612, ratably reduced (if the sums appropriated will not fully satisfy such entitlement).

Subsection (c) of new section 613 provides that in the event funds become available for making payments under the new Part P for any fiscal year, after allocations of previously available funds have

been made under new subsections (a) and (b) of this new section for that year, the amounts reduced under subsection (b) of this new section shall be increased on the same basis as they were reduced (and shall be paid to each State on that basis).

New section 614 establishes the conditions which each State must meet in order to qualify for assistance in any fiscal year under the new Part B.

Paragraph (1) of new section 614 establishes the condition that each State must have a policy in current effect which assures that *all* handicapped children have the right to a free appropriate public education.

Paragraph (2) of new section 614 establishes the condition that each State has developed a plan as required by present section 613(b) of the Act, as in effect prior to the enactment of the Education for All Handicapped Children Act, which plan will be submitted not later than August 21, 1975, and will be amended to comply with the provisions of this paragraph (2).

Clause (A) of this paragraph (2) provides that each such amended plan shall set forth policies and procedures which the State will undertake or has undertaken to assure that the State has established a goal to provide full educational opportunity to all handicapped children, with a detailed timetable specifying when such goal will be accomplished and describing the kind and number of facilities, personnel, and services which are necessary throughout the State to meet the required goal. (This clause (A) is identical to clause (C) of present section 613(b)(1) of the Act, as added to the Act by section 615(c) of the Education Amendments of 1974.)

Clause (B) of this paragraph (2) provides that each such amended plan shall set forth policies and procedures which the State will undertake or has undertaken to assure that a free appropriate public education (as such term is specifically defined in new section 602, as added by section 3 of the Committee bill) will be available for all handicapped children between the ages of three and eighteen within the State not later than September 1, 1978 (which date in intended to be substantially coterminous with the beginning of the 1978–79 school year in each State) and such free appropriate education will be available for all handicapped children between the ages of three and twenty-one within the State not later than September 1, 1980 (which date is intended to be substantially coterminous with the beginning of the 1980–81 school year in each State). The requirements of this clause (B) are subject to the specific exception that, with respect to handicapped children aged three to five and aged eighteen to twenty-one, inclusive, such requirements shall not be applied in any State if the application of such requirements would be inconsistent with State law or practice, or the order of any court, respecting public education within such age groups in the State.

Clause (C) of this paragraph (2) provides that each such amended plan shall set forth policies and procedures which the State will undertake or has undertaken to assure that all handicapped children, regardless of the severity of their handicap, residing in the State and who are in need of special education and related services are identified, located, and evaluated. Further, such policies and procedures

shall set forth a practical method to determine which handicapped children are in fact currently receiving special education and related services and which handicapped children are not in fact receiving such services. (This clause (C) is identical to clause (A) of present section 613(a)(1) of the Act, as added to the Act by section 615(c) of the Education Amendments of 1974.) Clause (D) of this paragraph (2) provides that each such amended plan shall set forth policies and procedures which the State will undertake or has undertaken to assure that it adheres to specific detailed criteria prescribed by the Commissioner of Education to protect the confidentiality of any data or information collected or caused to be collected by the State pursuant to its responsibilities under this new section 614. (This clause (D) is identical to clause (B) of present section 613(b)(1) of the Act, as added to the Act by section 615(c) of the Education Amendments of 1974.)

Clause (E) of this paragraph (2) provides that each such amended plan shall set forth policies and procedures which the State will undertake or has undertaken to assure that each such amended plan shall be available (for review and comment) to parents and other members of the general public at least thirty days prior to the time the amended plan is submitted to the Commissioner of Education for his approval. (This clause (E) is identical to clause (D) of present section 613 (b)(1) of the Act, as added to the Act by section 615(c) of the Education Amendments of 1974.)

Paragraph (3) of new section 614 establishes the condition that the State has established certain priorities for providing a free appropriate public education to all handicapped children in the State which priorities shall be adhered to in meeting the timetables required by clause (B) of paragraph (2) of new section 614. The priorities require the States to assure first, that a free appropriate public education will be available for all handicapped children in the State who are not receiving an education (i.e. who are without any educational services) and second, that a free appropriate education will be available for all handicapped children in the State with the most severe handicaps who are receiving an inadequate education (i.e. those most severely handicapped children for whom the educational services available to them are not adequately designed to meet their unique needs). This paragraph (3) further provides that the State must show that it has made adequate progress in meeting the timetables set forth in clause (B) of paragraph (2) of new section 614 (thus assuring that these overall timetables are being met and that the priorities established in this paragraph will be carried out as part of complying with the overall timetables).

Paragraph (4) of new section 614 establishes the condition that the State will assure that each local educational agency in the State will maintain the records of each handicapped child's individualized planning conference which conference is to be held at least three times each year. The records to be maintained must include the written statement developed pursuant to the individualized planning conference (the contents of which statement are specified in clauses (A) through (D) of paragraph (9) of new section 602). Further, this paragraph requires that as part of the conference to be held at least three times each

year the written statement developed for the handicapped child must be reviewed and, when appropriate, revised, and any such revision of the written statement must be with the agreement of the parents or guardian of the child.

Paragraph (5) of new section 614 establishes the condition that the State shall have established certain procedural safeguards for handicapped children and their parents or guardian with respect to the identification, evaluation, and educational placement of handicapped children. (The provisions of this paragraph are substantially identical to the provisions of paragraph (13) of present section 613(a) of the Act, as added to the Act by section 614(d) of the Education Amendments of 1974.)

Clause (A) of the paragraph (5) requires that such safeguards include notice to the parents or guardian of a handicapped child when the State or local educational agency proposes to initiate or change the educational placement of such child; an opportunity for the parents or guardian of such child to obtain an impartial due process hearing (which hearing may not be conducted by any State or local educational agency employee who is directly involved in the education or care of that child); an opportunity to examine the relevant records with respect to the child's classification and placement; an opportunity to obtain an independent educational evaluation of the child; the establishment of procedures to protect a handicapped child whose parents or guardian are unknown, unavailable, or where the child is a ward of the State and such procedures shall provide for the assignment of an individual to act as a surrogate for the parents or guardian (which individual may not be a State or local educational agency employee directly involved in the care or education of the child); and provision to insure that decisions rendered as a result of the due process proceedings required by this clause (A) shall be final and binding subject only to appropriate administrative or judicial review. Clause (B) of this paragraph (5) requires that safeguards further include procedures which insure that, to the maximum appropriate extent, all handicapped children (including those children in public or private institutions or other care facilities) are provided education services together with children who are not handicapped, and provision must be made to insure that any special education or other services which necessitate the removal of a handicapped child from the regular educational environment will occur only when the nature or severity of a child's handicap is such that education in regular classes with the use of supplementary aids and services cannot be satisfactorily achieved. Clause (C) of this paragraph (5) requires that additional procedures are established to insure that any testing and evaluation materials and procedures which are utilized in the evaluation and placement of handicapped children will be utilized and administered in a manner so as not to be racially or culturally discriminatory. This clause (C) is further clarified to require that any testing and evaluation materials or procedures utilized by the State or local educational agency must be provided and administered to the child in his primary home language or other mode of communication (such as braille or sign language) and no single test or evaluation

procedure may be the sole criterion to determine an appropriate educational program for a child.

Paragraph (6) of new section 614 establishes the condition that the State educational agency shall be responsible for insuring that the requirements set forth in new Part B are carried out, and, further, that persons in the State educational agency who are responsible for education programs for handicapped children shall generally supervise all educational programs for handicapped children within the State, including all such programs administered by any other State or local agency, and all such education programs shall meet the education standards of the State educational agency.

Paragraph (7) of new section 614 establishes the condition that the State will assure that (A) in carrying out the requirements of this section 614, procedures are established by the State for consultation with handicaped individuals, parents or guardians of handicapped children, and other individuals involved in or concerned with the education of handicapped; (B) prior to the adoption of any of the policies, programs, and procedures required pursuant to the new sections 614 and 615 of the Act there are public hearings, adequate notice of such hearings, and an opportunity for comment by the general public (with respect to the policies, procedures, and programs proposed to be adopted by the State); and (C) prior to the issuance of any rules and regulations by the State for the purpose of implementing the requirements of the Education for all Handicapped Children Act the State shall assure an opportunity for comment by the general public with respect to such proposed rules and regulations.

Paragraph (8) of new section 614 establishes the condition that an entity has been established in the State for the purpose of assuring compliance with the provisions of new Part B. At least half of the members of such entity must be handicapped individuals or parents or guardians of handicapped children and all of the members of such entity must be qualified by training and experience to carry out the purposes of this paragraph (8).

Clause (A) of this paragraph (8) requires such entity to conduct periodic evaluations throughout the State for the purpose of determining whether the State and local educational agencies within the State are fully complying with the requirements of the Education for all Handicapped Children Act so as to insure that all handicapped children are receiving the services therein required. Clause (B) of this paragraph (8) empowers such entity to receive individual complaints respecting alleged violations of the requirements of this Act, including complaints that a child has been erroneously classified as a handicapped child who is eligible to be counted for purposes of the State's entitlement pursuant to new section 612. This clause (B) further provides that there shall be notice and an opportunity for a hearing with respect to such complaints.

Clause (C) of this paragraph (8) requires such entity to make determinations with respect to such alleged violations and, upon a finding (after appropriate notice and opportunity for a hearing has been provided) that a violation has occurred, such entity shall so notify the State and appropriate local educational agency and take

appropriate steps to assure (either directly, through conciliation and mediation, or by other means) that such violations are corrected.

Clause (D) of this paragraph (8) requires that upon a determination that, after a reasonable period of time, the State or appropriate local educational agency has not taken adequate steps to correct a violation, such entity shall inform the Commissioner of Education who is directed thereupon to take appropriate action pursuant to his authority under new section 616 of the Act.

New section 615 provides that any State which meets the eligibility requirements set forth in new section 614 and which State desires to participate in the program under the new Part B shall submit to the Commissioner an annual application at such time, in such manner, and containing or accompanied by such information as the Commissioner deems necessary. Such annual application shall set forth certain programs, policies, and procedures to be undertaken by such State.

Clause (1) of subsection (a) of new section 615 provides that each application shall set forth a description of programs and procedures for the expenditure of funds to be paid to the State educational agency in the fiscal year for which such application is made. Such expenditure of funds must be made in conformance with the timetables, priorities, and other requirements established under paragraphs (2) and (3) of new section 614.

Clause (2) of subsection (a) of this new section 615 provides that each application shall set forth a description of programs and procedures by which funds received by the State or any of its political subdivisions under other Federal programs which expressly provide or set aside financial assistance for the education of handicapped children (including, but not limited to, such programs as Part A of Title I of the Elementary and Secondary Education Act, Titles III and IV of the Elementary and Secondary Act, and the Vocational Education Act of 1963) and funds received by the State or any of its political subdivisions under the Rehabilitation Act of 1973 which are utilized for the education of handicapped children will be utilized by the State or its political subdivisions only in a manner consistent with the purposes of the Education for all Handicapped Children Act. The requirement of this clause (2) shall not, however, be construed to limit or otherwise modify the specific requirements of the laws which govern such Federal programs.

Clause (3) of subsection (a) of this new section 615 provides that each application shall, consistent with the purposes of the Education for all Handicapped Children Act, set forth a description of the programs and procedures to develop and implement a comprehensive personnel development system specifically including in-service training for general and special education instructional and support personnel; shall set forth detailed procedures to assure that all personnel necessary and utilized to carry out the purposes of the new Part B are adequately and appropriately prepared and trained; shall set forth effective procedures to acquire and disseminate teachers and administrators of programs for handicapped children and to acquire and disseminate information derived from educational research and demonstration (and similar) projects; and shall set forth effective procedures for appropriately adopting promising educational practices and mate-

rials which are developed through such educational research and demonstration projects.

Clause (4) of subsection (a) of this new section 615 provides that each application shall set forth certain policies and procedures with respect to the education of handicapped children in non-public and private schools and facilities.

Subclause (A) of this clause (4) provides that each application shall set forth policies and procedures to assure that to the extent consistent with the number and location of handicapped children in the State who are enrolled in non-public elementary and secondary schools there will be provision made for such children to participate in program services which are assisted or carried out under this new Part B (by providing for such children special education and related services).

Subclause (B) of this clause (4) provides that each application shall set forth policies and procedures to assure that, if handicapped children are placed in or referred to private (non-public) schools or facilities by the State or a local educational agency within the State in order for the State or local agency to meet the requirements of this Act or other applicable law, the special education (which shall be in conformance with an individualized planning conference) and related services provided to such children in private schools or facilities shall be at no cost to their parents (or guardians). Further, this subclause (B) provides that the handicapped children placed in or referred to private schools and facilities shall have all the rights (under the Act or any other applicable law) to which they would be entitled if served (directly) by the State or appropriate local education agency and such State agency shall assure that the private schools and facilities shall meet the same standards that apply to State and local educational agencies.

Clause (5) of subsection (a) of this new section 615 provides that each application shall set forth certain policies and procedures with respect to the distribution of funds received by the State under the new Part B.

Subclause (A) of this clause (5) provides that each application shall set forth policies and procedures which assure that (1) forty percent of the funds distributed under the new Part B shall be distributed by the State educational agency to local educational agencies in the State in direct proportion to the number of handicapped children in need of a free appropriate public education in the area served by each such local agency and (2) sixty percent of the funds distributed under the new Part B shall be distributed by the State educational agency in a manner which is consistent with the requirements of paragraph (3) of new section 614 (relating to priorities for providing a free appropriate public education for handicapped children and progress made toward meeting the timetables established in paragraph (2)(B) of new section 614).

Subclause (B) of this clause (5) provides that each application shall set forth policies and procedures which assure that upon a determination by the compliance entity (estabilshed pursuant to new section 614(8)) that a child has been erroneously classified by the local educational agency) as a handicapped child between the ages of 3 and 21, inclusive, and actually receiving special education and related services, the State shall seek to recover any funds distributed to a local educa-

tional agency for services to a child who is so erroneously classified as a handicapped child.

Clause (6) of subsection (a) of new section 615 provides that each application shall set forth satisfactory assurance that a public agency will administer and control the funds provided under the new Part B for the purposes and uses provided therein and that title to (and administration of) any property derived from such funds shall be in a public agency for such purposes and uses.

Clause (7) of subsection (a) of new section 615 provides that each application shall contain assurances (A) that the State will make provision for making such reports as the Commissioner may require to carry out his functions under the new Part B and (B) that the State will keep such records (and afford access thereto) as the Commissioner may require to assure the accuracy of such reports and proper disbursement of Federal funds under the Act.

Clause (8) of subsection (a) of new section 615 provides that each application shall contain assurances that Federal funds made available under the new Part B shall be used to supplement and increase State and local funds expended for the education of handicapped children and in no case shall supplant such State and local funds. There is an exception to this requirement, in part, if the Commissioner determines that the State has provided clear and convincing evidence that *all* handicapped children (in the State) have available to them a free appropriate public education.

Clause (9) of subsection (a) of new section 615 provides that each application shall contain assurances (consistent with new section 617 (a) (2) of the Act relating to uniform financial reports) that the State will make provision for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid to any State under the Act, including any such funds paid to local educational agencies by the State.

Clause (10) of subsection (a) of new section 615 provides that each application shall, in accordance with criteria prescribed by the Commissioner pursuant to new section 618, establish procedures for the evaluation (at least annually) of the effectiveness of programs (in the State) in meeting the educational needs of handicapped children. The evaluation of such programs shall include an evaluation of individualized planning conferences.

Subsection (b) of new section 615 provides that the Commissioner shall approve any State annual application (and any modification thereof) if (1) the State has met the eligibility requirements of new section 614, and (2) the State meets the application requirements of subsection (a) of this new section 615. The Commissioner must disapprove any application which does not meet such eligibility and application requirements except that such disapproval shall not be final until the State has been given reasonable notice and opportunity for a hearing.

New section 616 establishes certain procedures with respect to withholding by the Commissioner of Education of Federal funds paid under the new Part B and judicial review of any such withholding.

Paragraph (1) of subsection (a) of new section 616 provides that whenever the Commissioner finds (after reasonable notice and opportunity for a hearing) that a State educational agency has failed to

comply substantially with any of the provisions of new sections 614 or 615 he shall notify such agency that payments under the new Part B will no longer be made to the State (or, in his discretion, that the State agency shall no longer make payments to specified local educational agencies whose actions or omissions have caused or involve such failure) until he is satisfied there is no longer any such failure to comply. No payments shall be made to the State (or by the State educational agency to local agencies whose actions or omissions have resulted in non-compliance) until the Commissioner is satisfied that there is no longer any such failure to comply.

Paragraph (2) of subsection (a) of new section 616 provides that whenever a compliance entity (established under new section 614(8)) in any State finds that there has been substantial failure to comply with the requirements of any provision of the Act such entity shall notify the State educational agency, the appropriate local educational agencies, the chief executive officer of the State, and the Commissioner. Upon such notification, the Commissioner may provide notice and an opportunity for a hearing and, if he finds a failure such as described in paragraph (1) of this subsection, he shall then withhold payments pursuant to this subsection.

Subsection (b) of new section 616 sets forth the judicial review procedures available to a State which is dissatisfied with the final action of the Commissioner with respect to an application submitted by such State under new section 615.

New section 617 provides that the Commissioner of Education and the Secretary of Health, Education, and Welfare shall carry out certain specific duties and functions in the administration of the new Part B.

Subsection (a) of new section 617 provides that in carrying out his duties under the new Part B, the Commissioner shall (1) cooperate with and render all necessary technical assistance (directly or by grant or contract) to the States with respect to the education of handicapped children and the execution of the provisions of the new Part B, (2) provide any necessary short-term training programs and institutes, (3) promote the education of all handicapped children in the States and disseminate information with respect thereto, and (4) insure that, within one year from the date of enactment of the Education for all Handicapped Children Act, each State shall certify (to the Commissioner) the actual number of handicapped children who are receiving special education and related services in such State (in order to assure that there is accurate data with respect to the number of handicapped children eligible to be counted for purposes of each State's entitlement under new section 612). Further, this subsection (a) provides that, as soon as practicable after the date of enactment, the Commissioner shall, by regulation, prescribe a uniform financial report to be utilized by State educational agencies in submitting an application for assistance under the new Part B.

Subsection (b) of new section 617 provides that the Commissioner shall issue, amend, and revoke such rules and regulations as may be necessary to carry out the provisions of new Part B. Further, this subsection specifically provides that the Commissioner, in carrying out the provisions of new Part B, is not authorized to use any less formal method of implementation than by rules and regulations.

Subsection (c) of new section 617 provides that the Commissioner shall take whatever action is necessary and appropriate to assure the protection of the confidentiality of any personally identifiable data, information, or records collected or maintained by him and by State and local educational agencies pursuant to the provisions of the Act.

Subsection (d) of new section 617 provides that the Secretary shall establish a task force which shall develop guidelines to assure that all programs administered by the Department of Health, Education, and Welfare which provide assistance for the education of handicapped children will be administered in a manner consistent with the provisions of the Act (as the Act is amended by the Committee bill). The Secretary shall be responsible for enforcing such guidelines and for assuring maximum cooperation by the agencies in the Department in the implementation of such guidelines. The task force established by the Secretary shall be composed of representatives of the Office of Education, the Bureau of Education for the Handicapped, the National Institute of Education, the Rehabilitation Services Administration, the Office of Child Development, the Office for Handicapped Individuals, the Office of the Assistant Secretary for Health and the Office of Civil Rights.

Subsection (e) of new section 617 authorizes to be included for each fiscal year in the appropriation for the Department of Health, Education, and Welfare such sums, not to be in excess of one-quarter of 1 percent of the amounts appropriated pursuant to new section 612, or $1,000,000, whichever is greater, as are necessary to administer the provisions of new Part B.

New section 618 provides that the Commissioner of Education shall conduct certain evaluations of and make certain reports with respect to the program authorized under the new Part B and with respect to the education of handicapped children generally.

Subsection (a) of new section 618 provides that the Commissioner shall measure and evaluate the impact of the program authorized under the new Part B and the effectiveness of State efforts to assure the free appropriate public education of all handicapped children.

Subsection (b) of new section 618 provides that in carrying out his responsibilities under the new Part B the Commissioner shall (directly or by grant or contract) conduct such studies, investigations, and evaluations as are necessary to assure the effective implementation of the new Part B. Under clause (1) of this subsection the Commissioner shall provide for the collection and annual reporting of information concerning programs and projects carried out with financial assistance under the new Part B and under other Federal programs supporting the education of handicapped children, and such information from State and local educational agencies (and other appropriate sources) as is necessary for the implementation of the new Part B specifically including such information as (A) the numbers of handicapped children participating in programs supported under the new Part B, (B) the types of handicaps and the numbers of children with such handicaps participating in such programs, (C) the numbers of children needing such services, and (D) the amount of Federal, State, and local expenditures specifically used to provide such special education programs. Under clause (2) of this subsection the Commissioner shall provide for the evaluation of such programs through (A) the develop-

ment of effective methods and procedures for such evaluation, (B) the testing and validating of such evaluation methods and procedures, and (C) conducting actual evaluation studies designed to test the effectiveness of activities supported by financial assistance under the Act.

Paragraph (1) of subsection (c) of new section 618 provides that, not later than 120 days after the close of each fiscal year, the Commissioner shall submit to the appropriate Congressional committee a full and complete report on the activities carried out under the Act. The second sentence of this paragraph (1) provides that such annual reports shall include (A) a full and detailed analysis and assessment of the progress being made toward the provision of a free appropriate public education to all handicapped children, (B) an evaluation of the effectiveness of the procedures undertaken by States to assure that handicapped children receive special education and related services in the least restrictive environment commensurate with their needs, along with any recommendations for change in the provisions of the new Part B or other Federal law providing assistance for the education of handicapped children, (C) an elevation of the effectiveness of the procedures undertaken by States to prevent erroneous classifications of children as eligible to be counted under new section 612, including actions undertaken by the Commissioner to carry out provisions of new section 612 relating to such erroneous classification.

Paragraph (2) of subsection (c) of new section 618 authorizes and directs the Commissioner to develop, prepare and submit to the appropriate committees of Congress by June 30, 1977, a comprehensive study of objective criteria and evaluation procedures which may be utilized in conjunction with individualized data available through the individualized planning conferences required pursuant to new section 614(4) in order to determine the effectiveness of special education and related services provided to handicapped children. In conducting such study, the Commissioner is authorized to make grants and contracts to public and private individuals and organizations to assist in developing such objective criteria and evaluation procedures, *except that* such grant or contract shall not be entered into with any individuals or organizations who have any financial or other direct interest in any programs or services being evaluated pursuant to this paragraph.

Paragraph (3) of subsection (c) of new section 618 provides that the Commissioner shall (directly or by grant or contract) develop and prepare a statistically valid survey of the effectiveness of the individualized planning conferences (required pursuant to new section 614 (4)) and such survey shall be submitted by him to the appropriate committees of Congress by December 1, 1977.

Subsection (d) of new section 618 authorizes the Commissioner to hire qualified personnel necessary to conduct data collection and evaluation activities required by subsections (b) and (c) of this new section 618 and to carry out his duties under new section 617(a)(1) without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service and without regard to chapter 51 and subchapter 111 of chapter 53 of such title relating to classification and general schedule pay rates, except that no more than twenty such personnel shall be employed at any one time.

Subsection (e) of new section 618 authorizes certain appropriations for fiscal year 1976 through fiscal year 1979 for the purposes of carrying out the provisions of this new section.

New section 619 relates to payments under the new Part B by the Commissioner of Education to the States.

Subsection (a) of new section 619 provides that the Commissioner shall, subject to the provisions of new section 614 relating to eligibility, pay to each State the amount which that State is entitled to receive under the new Part B.

Paragraph (1) of subsection (b) of new section 619 authorizes the Commissioner to pay to each State amounts equal to the amounts expended by each such State for administration and planning under the new Part B (which may include regional, interstate and intrastate technical assistance, and dissemination of necessary materials).

Paragraph (2) of subsection (b) of new section 618 places overall limitations on payments to States and specified jurisdictions for administration and planning in any fiscal year. The total of such payments shall not exceed (A) 5 per cent of the total of the amounts of the grants paid under the new Part B for that year to the State educational agency, or $200,000, whichever is greater, and (B) in the cases of Guam, American Samoa, the Virgin Islands, or the Trust Territory of the Pacific Islands, 5 per cent of the total of the amounts of the grants paid under the new Part B for that year in such jurisdictions, or $60,000, whichever is greater.

Paragraph (3) of subsection (b) of new section 618 authorizes to be appropriated such sums as may be necessary to carry out the provisions of this subsection.

Subsection (c) of new section 619 provides that payments under the Act may be made in advance or by way of reimbursement and in such installments as the Commissioner may determine necessary. *Section 5.* Amends Part A of the Education of the Handicapped Act to add after present section 605 two new sections relating to employment of handicapped individuals and grants for the removal of architectural barriers as follows:

New section 606 provides that the Secretary of Health, Education, and Welfare, as a condition of providing financial assistance under the Act, shall insure that each recipient of such assistance shall take affirmative action to employ and advance in employment qualified handicapped individuals covered under, and on the same terms and conditions as set forth in, the applicable provisions (i.e. sections 501 and 503) of the Rehabilitation Act of 1973 (87 Stat. 355), as amended, relating to employment of handicapped individuals by State rehabilitation agencies and rehabilitation facilities and under Federal contracts and subcontracts.

New section 607 provides that, upon application by any State or local educational agency, the Commissioner is authorized to make grants to pay part or all of the cost of altering existing buildings and equipment in the same manner and to the same extent as authorized by an Act approved August 12, 1968 (P.L. 90–480), relating to architectural barriers. This section 607 further provides that there are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

Section 6. Establishes that the effective date of sections 3 and 4 of the Education for all Handicapped Children Act shall be on and after July 1, 1976, *except that* (1) clauses (A), (C), (D) and (E) of paragraph (2) of new section 614 of the Act shall take effect on and after August 21, 1975, (2) subsection (a)(1)(D) and subsections (d) and (e) of new section 617 of the Act and subsection (a) and subsection (c)(2) of new section 618 of the Act shall be effective upon the date of enactment of the Committee bill and, (3) the Commissioner may prior to July 1, 1976, issue such regulations and make such determinations as he determines necessary to carry out the amendments to the Act made by sections 3 and 4 of the Committee bill.

Changes in Existing Law

In compliance with subsection (4) of Rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as repeated are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law which no change is proposed is shown in roman):

EDUCATION OF THE HANDICAPPED ACT

Part A—General Provisions

SHORT TITLE

Sec. [601.]*600.*[1] This title may be cited as the "Education of the Handicapped Act".

STATEMENT OF PURPOSE

Sec. 601. (a) The Congress finds that—

(1) there are more than eight million handicapped children in the United States today;

(2) the special educational needs of such children are being fully met in only a few school systems;

(3) more than half of the handicapped children in the United States do not receive appropriate educational services which would enable them to have full equality of opportunity;

(4) one million of the handicapped children in the United States are excluded entirely from the public school system and will not go through the educational process with their peers;

(5) there are many handicapped children throughout the United States participating in regular school programs whose handicaps prevent them from having a successful educational experience because their handicaps are undetected;

(6) because of the lack of adequate services within the public school system, families are often forced to find services outside the public school system, often at great distance from their residence and at their own expense;

[1] New sections 600, 601, and 602 shall take effect after July 1, 1976.

(7) developments in the training of teachers and in diagnostic and instructional procedures and methods have advanced to the point that, given appropriate funding, State and local educational agencies can and will provide effective special educational programs and related services to meet the needs of handicapped children;

(8) State and local educational agencies have a responsibility to provide education for all handicapped children, but present financial resources are inadequate to meet the special educational needs of handicapped children; and

(9) it is in the national interest that the Federal Government assist State and local efforts to provide programs to meet the educational needs of handicapped children in order to assure equal protection of the law.

(b) It is the purpose of this title to insure that all handicapped children have available to them within the time period specified in section 614 of this Act a free appropriate public education, to insure that the rights of handicapped children and their parents or guardians are protected, to relieve the fiscal burden placed upon the States and localities when they provide for the education of all handicapped children, and to assess and assure the effectiveness of efforts to educate handicapped children.

DEFINITION

[SEC. 602. As used in this title—

[(1) The term "handicapped children" means mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or other health impaired children who by reason thereof require special education and related services.

[(2) The term "Commissioner" means the Commissioner of Education.

[(3) The term "Advisory Committee" means the National Advisory Committee on Handicapped Children.

[(4) The term "construction", except where otherwise specified, means (A) erection of new or expansion of existing structures, and the acquisition and installation of equipment therefor; or (B) acquisition of existing structures not owned by any agency or institution making application for assistance under this title; or (C) remodeling or alteration (including the acquisition, installation, modernization, or replacement of equipment) of existing structures; or (D) acquisition of land in connection with the activities in clauses (A), (B), and (C); or (E) a combination of any two or more of the foregoing.

[(5) The term "equipment" includes machinery, utilities, and built in equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, and books, periodicals, documents, and other related materials.

[(6) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands and the Trust Territory of the Pacific Islands.

[(7) The term "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

[(8) The term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

[(9) The term "elementary school" means a day or residential school which provides elementary education, as determined under State law.

[(10) The term "secondary school" means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

[(11) The term "institution of higher education" means an educational institution in any State which—

[(A) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

[(B) is legally authorized within such State to provide a program of education beyond high school;

[(C) provides an educational program for which it awards a bachelor's degree, or provides not less than a two-year program which is acceptable for full credit toward such a degree, or offers a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

[(D) is a public or other nonprofit institution; and

[(E) is accredited by a nationally recognized accrediting agency or association listed by the Commissioner pursuant to this paragraph or, if not so accredited, is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited: *Provided, however*, That in the case of an institution offering a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or technological

fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge, if the Commissioner determines that there is no nationally recognized accrediting agency or association qualified to accredit such institutions, he shall appoint an advisory committee, composed of persons specially qualified to evaluate training provided by such institutions, which shall prescribe the standards of content, scope, and quality which must be met in order to qualify such institutions to participate under this Act and shall also determine whether particular institutions meet such standards. For the purposes of this paragraph the Commissioner shall publish a list of nationally recognized accrediting agencies or associations which he determines to be reliable authority as to the quality of education or training offered.

[(12) The term "nonprofit" as applied to a school, agency, organization, or institution means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

[(13) The term "research and related purposes" means research, research training (including the payment of stipends and allowances), surveys, or demonstrations in the field of education of handicapped children, or the dissemination of information derived therefrom, including (but without limitation) experimental schools.

[(14) The term "Secretary" means the Secretary of Health, Education, and Welfare.

[(15) The term "children with specific learning disabilities" means those children who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Such disorders include such conditions as perceptual handicaps, brain injury, minimal brain disfunction, dyslexia, and developmental aphasia. Such term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or of environmental disadvantage.]

DEFINITIONS

SEC. 602. As used in this title—

(1) "handicappd children" means mentally retarded, hard-of-hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health-impaired children, or children with specific learning disabilities who by reason thereof require special education and related services;

(2) "Advisory Committee" means the National Advisory Committee on Handicapped Children;

(3) "construction", except where otherwise specified, means (A) erection of new or expansion of existing structures, and the

acquisition and installation of equipment therefor; or (B) acquisition of existing structures not owned by any agency or institution making application for assistance under this title; or (C) remodeling or alteration (including the acquisition, installation, modernization, or replacement of equipment) of existing structures; or (D) acquisition of land in connection with the activities in clauses (A), (B), and (C); or (E) a combination of any two or more of foregoing;

(4) "children with specific learning disabilities" means those children who have a disorder in one or more of the basic psychologically processes involved in understanding or using language, spoken or written, including such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, and developmental aphasia, but excluding children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic handicaps;

(5) "Commissioner" means the Commissioner of Education;

(6) "elementary school" means a day or residential school which provides elementary education, as determined under State law;

(7) "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, telecommunications, sensory, and other technological aids and devices, and books, periodicals, documents, and other related materials;

(8) "free appropriate public education" means special education and related services which shall be provided at public expense, under public supervision and direction and without charge, and meeting the standards of the State educational agency, which shall include an appropriate preschool, elementary, or secondary school education in the applicable State and which is provided in conformance with an individualized planning conference required by this Act;

(9) "individualized planning conference" means a meeting or meetings for the purpose of developing a written statement for each handicapped child, developed by a representative of the local educational agency who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of handicapped children, the teacher, the parents or guardians of the child and the child when appropriate, which statement shall include (A) a statement of the child's present levels of educational performance, (B) statements of the short-term instructional objectives to be achieved, (C) a statement of the specific educational services to be provided to such child, and the extent or integration into the regular classroom, and (D) the projected date for initiation and anticipated duration of such services;

(10) "institution of higher education" means an educational institution in any State which—

(A) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(B) is legally authorized within such State to provide a program of education beyond high school;

(C) provides an educational program for which it awards a bachelor's degree, or provides not less than a two-year program which is acceptable for full credit toward such a degree, or offers a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

(D) is a public or other nonprofit institution; and

(E) is accredited by a nationally recognized accrediting agency or association listed by the Commissioner pursuant to this paragraph or, if not so accredited, is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited except that in the case of an institution offering a two-year program in engineering mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge, if the Commissioner determines that there is no nationally recognized accrediting agency or association qualified to accredit such institutions, he shall appoint an advisory committee, composed of persons specially qualified to evaluate training provided by such institutions, which shall prescribe the standards of content, scope and quality which must be met in order to qualify such institutions to participate under this Act and shall also determine whether particular institutions meet such standards; and for the purposes of this paragraph the Commissioner shall publish a list of nationally recognized accrediting agencies or associations which he determines to be reliable authority as to the quality of education or training offered;

(11) "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools, and such term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school;

(12) "nonprofit" as applied to a school, agency, organization, or institution means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual;

(13) "related services" means transportation and developmental, corrective, and other supportive services (including, but not limited to, speech pathology and audiology, psychological services, counseling services, physical and occupational therapy, and recreation) as required to assist a handicapped child to benefit from special education, and includes the early identification and assessment of handicapping conditions in children and provision of services to such children;

(14) "research and related purposes" means research, research training (including the payment of stipends and allowances), surveys, or demonstrations in the field of education of handicapped children, or the dissemination of information derived therefrom, including (but without limitation) experimental schools;

(15) "secondary school" means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12;

(16) "Secretary" means the Secretary of Health, Education, and Welfare;

(17) "special education" means specially designed instruction (including physical education) at no cost to parents or guardians to meet the unique needs of a handicapped child;

(18) "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands; and

(19) "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

* * * * * * *

ACQUISITION OF EQUIPMENT AND CONSTRUCTION OF NECESSARY FACILITIES

SEC. 605. (a) In the case of any program authorized by this title, if the Commissioner determines that such program will be improved by permitting the funds authorized for such programs to be used for the acquisition of equipment and the construction of necessary facilities, he may authorize the use of such funds for such purposes.

(b) If within twenty years after the completion of any construction (except minor remodeling or alteration) for which funds have been paid pursuant to a grant or contract under this title the facility constructed ceases to be used for the purposes for which it was con-

structed, the United States, unless the Secretary determines that there is good cause for releasing the recipient of the funds from its obligation, shall be entitled to recover from the applicant or other owner of the facility an amount which bears the same ratio to the then value of the facility as the amount of such Federal funds bore to the cost of the portion of the facility financed with such funds. Such value shall be determined by agreement of the parties or by action brought in the United States district court for the district in which the facility is situated.

EMPLOYMENT OF HANDICAPPED INDIVIDUALS

SEC. 606. As a condition of providing financial assistance under this Act, the Secretary shall insure that each recipient of such assistance shall take affirmative action to employ and advance in employment qualified handicapped individuals covered under, and on the same terms and conditions as set forth in the applicable provisions of the Rehabilitation Act of 1973 (87 Stat. 355), as amended, relating to employment of handicapped individuals by State rehabilitation agencies and rehabilitation facilities and under Federal contracts and subcontracts.

GRANTS FOR THE REMOVAL OF ARCHITECTURAL BARRIERS

SEC. 607. (a) Upon application by any State or local educational agency the Commissioner is authorized to make grants to pay part or all of the cost of altering existing buildings and equipment in the same manner and to the same extent as authorized by an Act approved August 12, 1968 (Public Law 90-480), relating to architectural barriers.

(b) For the purpose of carrying out the provisions of this section, there are authorized to be appropriated such sums as may be necessary.

[PART B—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

[GRANTS TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

[SEC. 611. (a) The Commissioner shall, in accordance with the provisions of this part, make payments to States for the purpose of assisting the States in the initiation, expansion, and improvement of programs and projects for the education of handicapped children at the preschool, elementary school, and secondary school levels in order to provide full educational opportunities to all handicapped children. Such payments may be used for the early identification and assessment of handicapping conditions in children under three years of age.

[(b)(1) Subject to the provisions of section 612, the maximum amount of the grant to which a State shall be entitled under this part shall be equal to—

[(A) the number of children aged three to twenty-one inclusive in that State in the most recent fiscal year for which satisfactory data are available;

multiplied by—

[(B) $8.75.

[(2) For the purpose of this subsection, the term "State" does not include the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

[(c)(1) The jurisdictions to which this subsection applies are the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

[(2) Each jurisdiction to which this subsection applies shall, for [the fiscal year ending June 30, 1975,] *fiscal years 1975 and 1976*, be entitled to a grant in an amount equal to an amount determined by the Commissioner, in accordance with criteria established by regulations, needed to initiate, expand, or improve programs and projects for the education of handicapped children at the preschool, elementary school, and secondary school levels, in that jurisdiction, except that the aggregate of the amount to which such jurisdictions are so entitled for any fiscal year shall not exceed an amount equal to 2 per centum of the aggregate of the amounts to which all States are entitled under subsection (b) of this section for that fiscal year. If the aggregate of the amounts, determined by the Commissioner pursuant to the preceding sentence, to be so needed for any fiscal year exceeds an amount equal to such 2 per centum limitation, the entitlement of each such jurisdiction shall be reduced proportionately until such aggregate does not exceed such 2 per centum limitation.

[(d) The Commissioner is authorized for [the fiscal year ending June 30, 1975,] *fiscal years 1975 and 1976*, to make payments to the Secretary of the Interior according to the need for such assistance for the education of handicapped children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the Interior, and the terms upon which payments for such purposes shall be made to the Secretary of the Interior shall be determined pursuant to such criteria as the Commissioner determines will best carry out the purposes of this part. The amount of such payment for any fiscal year shall not exceed 1 per centum of the aggregate amounts to which States are entitled under subsection (b) of this section for that fiscal year.]

[ALLOCATIONS OF APPROPRIATIONS

[SEC. 612. (a) Sums appropriated for the fiscal year ending June 30, 1975, shall be made available to States and allocated to each State, on the basis of unsatisfied entitlements under section 611, in an amount equal to the amount it received from the appropriation for this part for the fiscal year 1974. *Sums appropriated for the fiscal year ending June 30, 1976, shall be made available to States and allocated to each State on the basis of unsatisfied entitlements under section 611, in an amount equal to the amount it received from the appropriation for this part for the fiscal year 1975.*

[(b) Any sums appropriated to carry out this part for any fiscal year which remain after allocations under subsection (a) of this section shall be made to States in accordance with entitlements created under section 611 (to the extent that such entitlements are unsatisfied) ratably reduced.

[(c) In the event that funds become available for making payments under this part for any fiscal year after allocations have been made under subsections (a) and (b) for that year, the amounts reduced under subsection (b) shall be increased on the same basis as they were reduced.]

[STATE PLANS

[SEC. 613. (a) Any State which desires to receive grants under this part shall submit to the commissioner through its State educational agency a State plan (not part of any other plan) in such detail as the Commissioner deems necessary. Such State plan shall—

[(1) set forth such policies and procedures as will provide satisfactory assurance that funds paids to the State under this part will be expanded (A) either directly or through individual, or combinations of, local educational agencies, solely to initiate, expand, or improve programs and projects, including preschool programs and projects, (i) which are designed to meet the special educational and related needs of handicapped children throughout the State, and (ii) which are of sufficient size, scope, and quality (taking into consideration the special educational needs of such children) as to give reasonable promise of substantial progress toward meeting those needs, and (B) for the proper and efficient administration of the State plan (including State leadership activities and consultative services), and for planning on the State and local level: *Provided*, That the amount expended for such administration and planning shall not exceed 5 per centum of the amount allotted to the State for any fiscal year or $200,000 ($35,000 in the case of the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands), whichever is greater;

[(2) provide satisfactory assurance, that to the extent consistent with the number and location of handicapped children in the State who are enrolled in private elementary and secondary schools, provision will be made for participation of such children in programs assisted or carried out under this part;

[(3) provide satisfactory assurance that the control of funds provided under this part, and title to property derived therefrom, shall be in a public agency for the uses and purposes provided in this part, and that a public agency will administer such funds and property;

[(4) set forth policies and procedures which provide satisfactory assurance that Federal funds made available under this part will be so used as to supplement and, to the extent practical, increased the level of State, local, and private funds expended for the education of handicapped children, and in no case supplant such State, local and private funds;

[(5) provide that effective procedures, including provision for appropriate objective measurement of educational achievement, will be adopted for evaluating at least annually the effectiveness of the programs in meeting the special educational needs of, and providing related services for, handicapped children;

[(6) provide that the State educational agency will be the sole agency for administering or supervising the administration of the plan;

[(7) provide for (A) making such reports, in such form and containing such information, as the Commissioner may require to carry out his functions under this part, including reports of the objective measurements required by clause (5) of this subsection, and (B) keeping such records and for affording such access thereto as the Commissioner may find necessary to assure the correctness and verification of such reports and proper disbursement of Federal funds under this part;

[(8) provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part to the State, including any such funds paid by the State to local educational agencies;

[(9) provide satisfactory assurance that funds paid to the State under this part shall not be made available for handicapped children eligible for assistance under section 103(a)(5) of title I of the Elementary and Secondary Education Act of 1965;

[(10) provide satisfactory assurance that effective procedures will be adopted for aquiring and disseminating to teachers of, and administrators of programs for, handicapped children significant information derived from educational research, demonstration, and similar projects, and for adopting, where appropriate, promising educational practices developed through such projects;

[(11) contain a statement of policies and procedures which will be designed to insure that all education programs for the handicapped in the State will be properly coordinated by the persons in charge of special education programs for handicapped children in the State educational agency;

[(12)(A) establish a goal of providing full educational opportunities to all handicapped children, and (B) provide for a procedure to assure that funds expended under this part are used to accomplish the goal set forth in (A) of this paragraph and priority in the utilization of funds under this part will be given to handicapped children who are not receiving an education; and

[(13) provide procedures for insuring that handicapped children and their parents or guardians are guaranteed procedural safeguards in decisions regarding identification, evaluation and educational placement of handicapped children including, but not limited to (A)(i) prior notice to parents or guardians of the child when the local or State educational agency proposes to change the educational placement of the child, (ii) an opportunity for the parents or guardians to obtain an impartial due process hearing, examine all relevant records with respect to the classification or educational placement of the child, and obtain an independent educational evaluation of the child, (iii) procedures to protect the rights of the child when the parents or guardians are not known, unavailable, or the child is a ward of the State including the assignment of an individual (not to be an employee of the State or local educational agency involved in the education

or care of children) to act as a surrogate for the parents or guardians, and (iv) provision to insure that the decisions rendered in the impartial due process hearing required by this paragraph shall be binding on all parties subject only to appropriate administrative or judicial appeal; and (B) procedures to insure that, to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular education environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily; and (C) procedures to insure the testing and evaluation materials and procedures utilized for the purposes of classification and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory.

[(b)(1) Any State which desires to receive a grant under this part for any fiscal year beginning after June 30, 1973, shall submit to the Commissioner for approval not later than one year after the enactment of the Education of the Handicapped Amendments of 1974, through its State educational agency an amendment to the State plan required under subsection (a), setting forth in detail the policies and procedures which the State will undertake in order to assure that—

[(A) all children residing in the State who are handicapped regardless of the severity of their handicap and who are in need of special education and related services are identified, located, and evaluated, including a practical method of determining which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services;

[(B) policies and procedures will be established in accordance with detailed criteria prescribed by the Commissioner to protect the confidentiality of such data and information by the State;

[(C) there is established (i) a goal of providing full educational opportunities to all handicapped children, (ii) a detailed timetable for accomplishing such a goal, and (iii) a description of the kind and number of facilities, personnel, and services necessary throughout the State to meet such a goal; and

[(D) the amendment submited by the State pursuant to this subsection shall be available to parents and other members of the general public at least thirty days prior to the date of submission of the amendment to the Commissioner.

For the purpose of this part, any amendment to the State plan required by this subsection and approved by the Commissioner shall be considered, after June 30, 1975, as a required portion of the State plan.

[(2) The requirement of paragraph (1) of this subsection shall not be effective with respect to any fiscal year in which the aggregate of the amounts alloted to the States for this part for that fiscal year is less than $45,000,000.

[(c) The Commissioner shall approve any State plan which he determines meets the requirements and purposes of this part.

[(d)(1) The Commissioner shall not approve any State plan pursuant to this section for any fiscal year unless the plan has, prior to its submission, been made public as a separate document by the State educational agency and a reasonable opportunity has been given by that agency for comment thereon by interested persons (as defined by regulation). The State educational agency shall make public the plan as finally approved. The Commissioner shall not finally disapprove any plan submitted under this section or any modification thereof, without first affording the State educational agency submitting the plan reasonable notice and opportunity for a hearing.

[(2) Whenever the Commissioner, after reasonable notice and opportunity for hearing to such State agency, finds—

[(A) that the State plan has been so changed that it no longer complies with the provisions of this part, or

[(B) that in the administration of the plan there is a failure to comply substantially with any such provision or with any requirements set forth in the application of a local educational agency approved pursuant to such plan.

the Commissioner shall notify the agency that further payments will not be made to the State under this part (or in his discretion, that further payments to the State will be limited to programs or projects under the State plan, or portions thereof, not affected by the failure, or that the State educational agency shall not make further payments under this part to specified local agencies affected to the failure) until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied, the Commissioner shall make no further payments to the State under this part (or shall limit payments to programs or projects under, or parts of, the State plan not affected by the failure, or payments by the State educational agency under this part shall be limited to local educational agencies not affected by the failure, as the case may be).

[(e)(1) If any State is dissatisfied with the Commissioner's final action with respect to the approval of its State plan submitted under subsection (a) or with his final action under subsection (d), such State may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner. The Commissioner thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

[(2) The findings of fact by the Commissioner, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Commissioner to take further evidence, and the Commissioner may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

[(3) The court shall have jurisdiction to affirm the action of the Commissioner or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

[PAYMENTS

[SEC. 614. From the amounts allotted to each State under this part, the Commissioner shall pay to that State an amount equal to the amount expended by the State in carrying out its State plan.]

PART B—ASSISTANCE TO STATES FOR THE EDUCATION OF ALL HANDICAPPED CHILDREN [1]

DURATION OF ASSISTANCE

SEC. 611. During the period beginning July 1, 1976, and ending September 30, 1979, the Commissioner shall, in accordance with provisions of this part, make payments to State educational agencies for grants made on the basis of entitlements created under this part for the purpose of assisting such States in providing full educational opportunity to all handicapped children. Such payments may be used for the early identification and assessment of handicapping conditions in children under the three years of age.

STATE ENTITLEMENTS FOR EDUCATION OF HANDICAPPED CHILDREN

SEC. 612. (a) The Commissioner shall, in accordance with the provisions of this part, make payments to States for the purposes set forth in section 611.

(b) (1) Subject to the provisions of paragraph (2) of this subsection and section 613, the maximum amount of the grant to which a State shall be entitled under this part shall be equal to—

(A) the number of handicapped children aged three to twenty-one, inclusive, in that State, who are receiving special education and related services for the most recent fiscal year for which satisfactory data are available;

multiplied by—

(B) $300.

(2) Notwithstanding any other provision of this subsection no State may count for the purpose of clause (A) of paragraph (1) of this subsection more than 10 per centum of the children aged three to twenty-one, inclusive, in that State for that year.

(3) For the purpose of this subsection, the term 'State' does not include Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(c) (1) The jurisdictions to which this subsection applies are Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(2) Each jurisdiction to which this subsection applies shall be entitled to a grant for the purposes set forth in section 611 in an amount equal to an amount determined by the Commissioner in accordance with criteria established by regulations, except that the aggregate of

[1] This new Part B shall take effect on and after July 1, 1976, except clauses (A), (C), (D), and (E) of paragraph (2), of section 614 of the Education of the Handicapped Act, as amended by this Act, shall take effect on and after August 21, 1975, (2) subsection (a)(1)(D) and subsections (d) and (e) of section 617 of the Education of the Handicapped Act, as amended by this Act, and subsection (a) and subsection (c)(2) of section 618 of the Education of the Handicapped Act, as amended by this Act, shall be effective upon the date of enactment of this Act, and (3) Commissioner may prior to such date issue such regulations and make such determinations to carry out the amendments made by sections 3 and 4 of this Act as he determines necessary.

the amount to which such jurisdictions are so entitled for any fiscal year shall not exceed an amount equal to 1 per centum of the aggregate of the amounts to which all States are entitled under subsection (b) of this section for that fiscal year. If the aggregate of the amounts, determined by the Commissioner pursuant to the preceding sentence, to be so needed for any fiscal year exceeds an amount equal to such 1 per centum limitation, the entitlement of each such jurisdiction shall be reduced proportionately until such aggregate does not exceed such 1 per centum limitation.

(d) The Commissioner is authorized to make payments to the Secretary of the Interior according to the need for such assistance for the education of handicapped children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the Interior and the terms upon which payments for such purposes shall be made to the Secretary of the Interior shall be determined pursuant to such criteria as the Commissioner determines will best carry out the purposes of this part. The amount of such payment for any fiscal year shall not exceed 1 per centum of the aggregate amounts to which States are entitled under subsection (b) of this section for that fiscal year.

ALLOCATIONS OF APPROPRIATIONS

SEC. 613. (a) Sums appropriated for each fiscal year shall be made available to States and allocated to each State on the basis of unsatisfied entitlements under section 612, in an amount equal to the amount it received from the appropriation for this part for the fiscal year preceding the fiscal year for which the determination is made.

(b) Any sums appropriated to carry out this part for any fiscal year which remain after allocations under subsection (a) of this section shall be made to States in accordance with entitlements created under section 612 (to the extent that such entitlements are unsatisfied) ratably reduced.

(c) In the event that funds become available for making payments under this part for any fiscal year after allocations have been made under subsections (a) and (b) for that year, the amounts reduced under subsection (b) shall be increased on the same basis as they were reduced.

ELIGIBILITY

SEC. 614. In order to qualify for assistance under this part in any fiscal year, a State shall demonstrate to the Commissioner that the following conditions are met:

(1) The State has in effect a policy that assures all handicapped children the right to a free appropriate public education.

(2) The State has developed a plan pursuant to section 613(b) of this Act in effect prior to the enactment of the Education for All Handicapped Children Act which will be submitted not later than August 21, 1975, and will be amended so as to comply with the provisions of this paragraph. Each such amended plan shall set forth in detail the policies and procedures which the State will undertake or has undertaken in order to assure that—

(A) there is established (i) a goal of providing full educational opportunity to all handicapped children, (ii) a detailed timetable for accomplishing such a goal, and (iii) a description of the kind and number of facilities, personnel, and services necessary throughout the State to meet such a goal;

(B) a free appropriate public education will be available for all handicapped children between the ages of three and eighteen within the State not later than September 1, 1978, and for all handicapped children between the ages of three and twenty-one within the State not later than September 1, 1980, except that, with respect to handicapped children aged three to five and aged eighteen to twenty-one inclusive, the requirements of this clause shall not be applied in any State if the application of such requirements would be inconsistent with State law or practice, or the order of any court, respecting public education within such age groups in the State;

(C) all children residing in the State who are handicapped regardless of the severity of their handicap and who are in need of special education and related services are identified, located, and evaluated, including a practical method of determining which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services;

(D) policies and procedures are established in accordance with detailed criteria prescribed by the Commissioner to protect the confidentiality of such data and information by the State; and

(E) the amendment to the plan submitted by the State required by this section shall be available to parents and other members of the general public at least thirty days prior to the date of submission of the amendment to the Commissioner.

(3) The State has established priorities for providing a free appropriate public education to all handicapped children which priorities shall meet the timetables set forth in paragraph (2)(B) of this section, first with respect to handicapped children who are not receiving an education, and second with respect to handicapped children with the most severe handicaps who are receiving an inadequate education, and has made adequate progress in meeting the timetables set forth in paragraph (2)(B) of this section.

(4) Each local educational agency in the State will maintain records of the individualized planning conference for each handicapped child, including the written statement developed pursuant to such conference, and such conference shall be held at least three times each year to develop, receive and, when appropriate and with the agreement of the parents or guardian of the handicapped child, revise such statement.

(5) The State has established procedures to insure that handicapped children and their parents or guardians are guaranteed procedural safeguards in decisions regarding identification, evaluation, and educational placement of handicapped children including, but not limited to (A)(i) prior notice to parents or guardians of the child when the local or State educational agency proposes to initiate or change the

educational placement of the child, (ii) an opportunity for the parents or guardian to obtain an impartial due process hearing (not to be conducted by an employee of the State or local educational agency directly involved in the education or care of the child), examine all relevant records with respect to the classification or educational placement of the child, and obtain an independent educational evaluation of the child, (iii) procedures to protect the rights of the child when the parents or guardian are not known, unavailable, or the child is a ward of the State including the assignment of an individual (not to be an employee of the State or local educational agency directly involved in the education or care of the child) to act as a surrogate for the parents or guardian, and (iv) provision to insure that the decisions rendered in the impartial due process hearing required by this paragraph shall be binding on all parties subject only to appropriate administrative or judicial appeal; (B) procedures to insure that, to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily; and (C) procedures to insure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's primary home language or mode of communication, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

(6) The State educational agency shall be responsible for insuring that the requirements of this part are carried out and that all educational programs for handicapped children within the State, including all such programs administered by any other State or local agency, will be under the general supervision of the persons responsible for educational programs for handicapped children in the State educational agency and shall meet education standards of the State educational agency.

(7) The State shall assure that (A) in carrying out the requirements of this section procedures are established for consultation with individuals involved in or concerned with the education of handicapped children including handicapped individuals and parents or guardians of handicapped children, (B) there are public hearings, adequate notice of such hearings, and an opportunity for comment available to the general public prior to adoption of the policies, programs, and procedures required pursuant to the provisions of this section and section 615 of this Act, and (C) there is opportunity for comment by the general public on any rules or regulations proposed for issuance by the State pursuant to this Act.

(8) The State has established an entity for the purpose of insuring compliance with the provisions of this part, at least half of the members of which shall be handicapped individuals or parents or

guardians of handicapped children and all of whom shall be qualified by training or experience to carry out the purposes of this paragraph, which entity shall (A) conduct periodic evaluations in all areas of the State in order to determine whether the State educational agency and all local educational agencies within the State are in full compliance with the provisions of this Act to insure that all handicapped children within the State are in fact receiving the services required by this Act; (B) be empowered to receive complaints (including complaints that a child has been erroneously classified as eligible to be counted under section 612 of this Act) from individuals with respect to alleged violations of the provisions of this Act and shall provide notice and an opportunity for a hearing with respect thereto; (C) make determinations with respect to such alleged violations and, upon a finding that a violation has occurred, notify the State and appropriate local educational agencies of such finding and take appropriate steps to assure that such violations are corrected; and (D) upon a determination that, after a reasonable period of time, adequate steps have not been undertaken to correct such violations, so inform the Commissioner who shall take appropriate action pursuant to section 616 of this Act.

APPLICATION

SEC. 615. (a) Any State meeting the eligibility requirements set forth in section 614 and desiring to participate in the program under this part shall submit to the Commissioner an annual application at such time, in such manner, and containing or accompanied by such information, as he deems necessary. Each such application shall—

(1) set forth a description of programs and procedures for the expenditure of funds paid to the State agency in the fiscal year for which such application is made, in conformance with the requirements of section 614 (2) and (3) of this part;

(2) set forth a description of programs and procedures by which funds received by the State or any of its political subdivisions under other Federal programs (including, but not limited to, part A of title I of the Elementary and Secondary Education Act; title III and title IV of the Elementary and Secondary Education Act, or its successor authority; and the Vocational Education Act of 1963) which expressly provide, or set aside, financial assistance for the education of handicapped children, and funds received by the State or any of its political subdivisions under the Rehabilitation Act of 1973 which are utilized for the education of handicapped children, will be utilized by the State or any of its political subdivisions only in a manner consistent with the provisions of this Act, except that nothing herein shall be construed to limit the specific requirements of the laws governing such Federal programs;

(3) Consistent with the purposes of this Act, set forth a description of programs and procedures for the development and implementation of a comprehensive system of personnel development which shall include the inservice training of general and special educational instructional and support personnel, detailed procedures to assure that all personnel necessary to carry out the

purposes of this part are appropriately and adequately prepared and trained, and that effective procedures for acquiring and disseminating to teachers and administrators of programs for handicapped children, significant information derived from educational research, demonstration, and similar projects, and for adopting, where appropriate, promising educational practices and materials developed through such projects;

(4) set forth policies and procedures to assure (A) that to the extent consistent with the number and location of handicapped children in the State who are enrolled in non-public elementary and secondary schools, provision is made for the participation of such children in the program assisted or carried out under this part by providing for such children special education and related services; and

(B) that handicapped children in private schools and facilities will be provided special education (in conformance with an individualized planning conference as required by this Act) and related services at no cost to their parents, if such children are placed in or referred to such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this title or other applicable law requiring the provision of special education and related services to all handicapped children within such State and that in all such instances the State educational agency shall assure that such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights they would have if served by such agencies;

(5) set forth policies and procedures which assure (A) that of the funds distributed under this part, 40 per centum of such funds shall be distributed to local educational agencies in the State in direct proportion to the number of handicapped children who are in need of a free appropriate public education within the area served by each such local educational agency and 60 per centum of such funds shall be distributed in a manner which is consistent with the requirements of section 614 (3), and (B) that the State shall seek to recover any funds distributed to a local educational agency for services to any child who is determined by the entity required pursuant to section 614(8) to be erroneously classified as eligible to be counted under section 612 of this Act;

(6) provide satisfactory assurance that the control of funds provided under this part, and title to property derived therefrom, shall be in a public agency for the uses and purposes provided in this part, and that a public agency will administer such funds and property;

(7) provide for (A) making such reports in such form and containing such information as the Commissioner may require to carry out his functions under this part, and (B) keeping such records and affording such access thereto as the Commissioner may find necessary to assure the correctness and verification of such reports and proper disbursement of Federal funds under this Act;

(8) provide satisfactory assurance that Federal funds made available under this part will be so used as to supplement and increase the level of State and local funds expended for the education of handicapped children and in no case supplant such State and local funds; except that, where the State provides clear and convincing evidence that all handicapped children have available to them a free appropriate public education, the Commissioner may waive in part the requirement of this clause if he concurs with the evidence provided by the State;

(9) provide, consistent with procedures prescribed pursuant to section 617 (a) (2), satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this Act to the State, including any such funds paid by the State to local educational agencies; and

(10) provide for procedures for evaluation at least annually of the effectiveness of programs in meeting the educational needs of handicapped children (including evaluation of individualized planning conferences), in accordance with such criteria that the Commissioner shall prescribe pursuant to section 618.

(b) The Commissioner shall approve any State annual application and any modification thereof which—

(1) is submitted by a State eligible in accordance with section 614 of this Act, and

(2) meets the requirements of subsection (a) of this section.

The Commissioner shall disapprove any application which does not meet the requirements of the preceding sentence, but shall not finally disapprove a State application except after reasonable notice and opportunity for a hearing to the State.

WITHHOLDING AND JUDICIAL REVIEW

SEC. 616. (a)(1) Whenever the Commissioner, after reasonable notice and opportunity for a hearing to any State educational agency, finds that there has been a failure to comply substantially with any provisions of section 614 or 615, the Commissioner shall notify the agency that payments will not be made to the State under this part (or, in his discretion, that the State educational agency shall not make further payments under this part to specified local educational agencies whose actions or omissions caused or are involved in such failure) until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied, no payments shall be made to the State under this part, or payments by the State educational agency under this part shall be limited to local educational agencies whose actions did not cause or were not involved in the failure, as the case may be.

(2) Whenever an entity established pursuant to section 614(8) in any State finds that there has been substantial failure to carry out the requirements of any provision of this Act, it shall notify the State educational agency, the appropriate local educational agencies, the chief executive officer of the State and the Commissioner who may provide notice, conduct a hearing and, if he finds a failure described in paragraph (1), withheld payments pursuant to this subsection.

(b)(1) If any State is dissatisfied with the Commissioner's final action with respect to its application submitted under section 615, such State may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner. The Commissioner thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

(2) The findings of fact by the Commissioner, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Commissioner to take further evidence, and the Commissioner may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(3) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Commissioner or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

ADMINISTRATION

SEC. 617. (a)(1) In carrying out his duties under this part, the Commissioner shall—

(A) cooperate with, and render all technical assistance necessary, directly or by grant or contract, to the States in matters relating to the education of handicapped children and the execution of the provisions of this part;

(B) provide such short-term training programs and institutes as are necessary;

(C) disseminate information, and otherwise promote the education of all handicapped children within the States; and

(D) insure that each State shall within one year of the effective date of the Education for All Handicapped Children Act provide certification of the actual number of handicapped children receiving special education and related services in such State.

(2) As soon as practicable after the enactment of this Act, the Commissioner shall, by regulation, prescribe a uniform financial report to be utilized by State agencies in submitting an application for assistance under this part in order to assure equity among the States.

(b) In carrying out the provisions of this part the Commissioner shall issue, amend, and revoke such rules and regulations as may be necessary. No other less formal method of implementing such provisions is authorized.

(c) The Commissioner shall take appropriate action to assure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by him and by State and local educational agences pursuant to the provisions of this Act.

(d) The Secretary shall establish a task force composed of representatives of the Office of Education, the Bureau of Education for the

Handicapped, the National Institute of Education, the Rehabilitation Services Administration, the Office of Child Development, the Office for Handicapped Individuals, the office of the Assistant Secretary for Health, and the Office of Civil Rights, which shall develop guidelines to assure that all programs administered by the Department of Health, Education, and Welfare which provide assistance for the education of handicapped children will be administered in a manner consistent with the provisions of this Act. The Secretary shall be responsible for enforcing such guidelines and for assuring maximum cooperation in the implementation of such guidelines by the agencies referred to herein.

(e) There are authorized to be included for each fiscal year in the appropriation for the Department of Health, Education, and Welfare such sums, not in excess of one-quarter of 1 per centum of the amounts appropriated pursuant to section 612, or $1,000,000, whichever is greater, as are necessary to administer the provisions of this part.

EVALUATION

SEC. 618. (a) The Commissioner shall measure and evaluate the impact of the program authorized under this part and the effectiveness of State efforts to assure the free appropriate public education of all handicapped children.

(b) In carrying out his responsibilities under this part, the Commissioner shall conduct, directly or by grant or contract, such studies, investigations, and evaluations as are necessary to assure effective implementation of this part and (1) shall provide for the collection and annual reporting of programmatic information concerning programs and projects carried out with financial assistance under this part and other Federal programs supporting the education of handicapped children, and such information from State and local educational agencies and other appropriate sources necessary for the implementation of this part, including such information as (A) the numbers of handicapped children participating in programs supported under this part, (B) the types of handicaps and the numbers of children with such handicaps participating in such programs, (C) the numbers of children needing such services, (D) the amount of Federal, State, and local expenditures specifically used to provide such special education programs; and (2) provide for the evaluation of such programs through (A) the development of effective methods and procedures for evaluation, (B) the testing and validating of such evaluation methods and procedures, and (C) conducting actual evaluation studies designed to test the effectiveness of activities supported by financial assistance under this Act.

(c) (1) Not later than one hundred and twenty days after the close of each fiscal year, the Commissioner shall submit to the appropriate committees of Congress a full and complete report on the activities carried out under this Act. Such annual reports shall include (A) a full and detailed analysis and assessment of the progress being made toward the provision of a free appropriate public education to all handicapped children, (B) an evaluation of the effectiveness of the procedures undertaken by States to assure that handicapped children

receive special education and related services in the least restrictive environment commensurate with their needs, along with any recommendations for change in the provisions of this part or other Federal law providing assistance for the education of handicapped children, (C) an evaluation of the effectiveness of the procedures undertaken by States to prevent erroneous classification of children as eligible to be counted under section 612 of this Act, including actions undertaken by the Commissioner to carry out provisions of this Act relating to such erroneous classification.

(2) The Commissioner is authorized and directed to develop, prepare and submit to the appropriate committees of Congress by June 30, 1977, a comprehensive study of objective criteria and evaluation procedures to determine the effectiveness of special education and related services provided to handicapped children. Such criteria and procedures shall be designed in order that they may be utilized in conjunction with individualized data available through the individualized planning conferences required pursuant to section 614 of this part. In conducting such study, the Commissioner is authorized to make grants and contracts to public and private individuals and organizations to assist in developing objective criteria and evaluation procedures, except that such grant or contract shall not be entered into with any individuals or organizations who have any financial or other direct interest in any programs or services being evaluated pursuant to this paragraph.

(3) The Commissioner shall, directly or by grant or contract develop, prepare, and submit to the appropriate committees of Congress by December 1, 1977, a statistically valid survey of the effectiveness of the individualized planning conferences.

(d) The Commissioner is authorized to hire qualified personnel necessary to conduct data collection and evaluation activities required by subsections (b) and (c) of this section and to carry out his duties under section 617(a)(1) of this Act without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates except that no more than twenty such personnel shall be employed at any time.

(e) There are authorized to be appropriated for carrying out the responsibilities of this section $2,500,000 for fiscal year 1976, $3,500,000 for fiscal year 1977, $5,000,000 for fiscal year 1978, and $7,500,000 for fiscal year 1979.

PAYMENTS

SEC. 619. (a) The Commissioner shall, subject to the provisions of section 614 relating to eligibility, pay to each State the amount which that State is entitled to receive under this part.

(b)(1) The Commissioner is authorized to pay to each State amounts equal to the amounts expended for administration and planning under this part which may include regional, interstate and intrastate technical assistance, and dissemination of necessary materials.

(2) The total of such payments in any fiscal year shall not exceed—

(A) 5 per centum of the total of the amounts of the grants paid under this Act for that year to the State educational agency, or $200,000, whichever is greater; and

(B) in the cases of Guam, American Samoa, the Virgin Islands, or the Trust Territory of the Pacific Islands, 5 per centum of the total of the amounts of the grants paid under this Act for that year in such jurisdictions, or $60,000, whichever is greater.

(3) There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the provisions of this subsection.

(c) Payments under this Act may be made in advance or by way of reimbursement and in such installments as the Commissioner may determine necessary.

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SEC. 614. (a) Effective for fiscal year 1975 *and fiscal year 1976* only, section 611 of the Education of the Handicapped Act is amended to read as follows:

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(b) Effective for fiscal year 1975 *and fiscal year 1976* only, section 612 of such Act is amended to read as follows:

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(c) Effective for fiscal year 1975 *and fiscal year 1976* only, section 613(a) of such Act is amended by striking out "desires to receive grants" in the first sentence of such subsection and inserting in lieu thereof "is entitled to receive payments".

ADDITIONAL VIEWS OF SENATORS STAFFORD, JAVITS, KENNEDY, SCHWEIKER, AND HATHAWAY

This Committee has a longstanding commitment to the welfare of preschool children. That commitment has been backed up in other legislation developed by the Committee and we do not feel that it should be diluted in such an important area as the education of handicapped children. If it is the Congress' intent that all children should receive an appropriate education it seems clear that such a commitment must include the requirement that services be provided at the most appropriate time—when the child is at the earlier stages of development and will thus benefit most; *not* when it happens to be convenient.

This Act deals with a *special* group of children who need special educational services. It provides assistance for these services at Federal expense. To delay the delivery of those services because of restrictions of State law or practice is neither reasonable nor wise.

We, therefore, disagree with the action taken during full Committee consideration of this bill, which dropped the mandate for 3 to 5 year olds, and restate our firm belief in the principle of requiring special education services for those children with handicapping conditions who are younger than mandated school age.

During consideration of S. 6, testimony from parents, teachers, and experts in special education specifically emphasized the need for the earliest possible identification, evaluation, and service to children prior to their entry into the normal educational process.

The Committee heard testimony which indicated strongly that special educational services provided to handicapped children before "normal" school age were often the most beneficial, since much more could be done at an earlier age to ameliorate, alter, or develop skills to compensate for, certain handicapping conditions. The earlier such conditions can be diagnosed, in the long run, the less costly the special educational services the child will need during his or her school years.

We are cognizant of the concerns of the States regarding their financial capacity to provide a full educational services to this group of children. Nevertheless, we feel that it is imperative to point out that the benefits of early identification and education, both in terms of prevention of future human tragedy, and in the long-term cost effectiveness of tax dollars, are so great as to justify continued emphasis upon preschool education for handicapped children.

According to information the Committee has received, 35 states have laws which provide services to children with handicaps at an age less than six years old. There are 15 states and the District of Columbia then where services are not required for at least some group of handicapped children below school age, but even some of these states have laws which permit such services to such handicapped children.

The bill as reported to the full Committee from the Subcommittee on the Handicapped provided for such services to the age group 3 to 5 years of age. As reported to the full Committee, S. 6 reflected the commitment to service for preschool children that was adopted in P.L. 93-380 last year. This position was consistent with present law.

Therefore, we do not agree with the full Committee action which makes such service permissive for those states who are not providing services or whose laws prohibit or do not authorize the provision of such services. We think that the action taken by the Committee unwisely moves the Congress away from the policy in present law which emphasizes the earliest possible service to handicapped children.

ROBERT T. STAFFORD.
EDWARD M. KENNEDY.
WILLIAM D. HATHAWAY.
RICHARD SCHWEIKER.
J. K. JAVITS.

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